PART A ONLY

Section 1. Article 32 of the tax law is REPEALED.

§ 2. Section 180 of the tax law is REPEALED.

§ 3. Section 181 of the tax law is REPEALED.

§ 4. Section 208 of the tax law, as added by chapter 415 of the laws of 1944, subdivision 1 as amended by chapter 576 of the laws of 1994, subdivision 1-A as amended by chapter 166 of the laws of 1991, subdivision 1-B as added by section 45 of part A and paragraph (k) of subdivision 9 as added by section 46 of part A of chapter 389 of the laws of 1997, subdivision 3, the opening paragraph, subparagraphs 6 and 11 of paragraph (b), and the opening paragraph of paragraph (g) of subdivision 9 as amended and subdivision 8-B and subparagraph 3-a of paragraph (b) of subdivision 9 as added by chapter 817 of the laws of 1987, subdivision 4 as amended by section 1, subdivision 6 as amended by section 2 and subparagraph 2 of paragraph (a) of subdivision 9 as amended by section 7 of part M of chapter 407 of the laws of 1999, subdivisions 5 and 7, paragraph (a) of subdivision 8-B, subparagraph 10 of paragraph (b) and paragraph (j) of subdivision 9 as amended, paragraph (d) of subdivision 8-B and paragraph (c-1) of subdivision 9 as added and paragraphs (e) and (f) of subdivision 8-B as relettered by chapter 170 of the laws of 1994, subdivisions 8 and 10 as amended by chapter 133 of the laws of 1945, subdivision 8-A as added and subparagraph 1 of paragraph (a) of subdivision 9 as amended by chapter 778 of the laws of 1972, paragraph (b) of subdivision 8-A and paragraph (i) of subdivision 9 as amended by chapter 779 of the laws of 1972, subdivision 9 as amended by chapter 713 of the laws of 1961, paragraph (a) of subdivision 9 as amended by chapter 203 of the laws of 1962, subparagraphs 5, 9 and 10 of S. 6359--D 5 A. 8559--D

1 paragraph (a) and subparagraphs 8 and 9 of paragraph (b) of subdivision 9 as amended by chapter 61 of the laws of 1989 and paragraph (f) of subdivision 9 as separately amended by sections 278 and 347 of chapter 61 of the laws of 1989, clause (i) of subparagraph 5 of paragraph (a) of subdivision 9 as amended by section 2 and subparagraph 20 of paragraph (b) of subdivision 9 as added by section 3 of part C of chapter 25 of the laws of 2009, subparagraph 6 of paragraph (a) of subdivision 9 as added by chapter 895 of the laws of 1975 and as renumbered by chapter 613 of the laws of 1976, subparagraph 7 of paragraph (a) of subdivision 9 as added by chapter 33 of the laws of 1978, subparagraph 8 of paragraph (a) and subparagraph 7 of paragraph (b) of subdivision 9 as amended by chapter 639 of the laws of 1986, subparagraph 11 of paragraph (a) of subdivision 9 as added by chapter 15 of the laws of 1983, subparagraph 12 of paragraph (a), subparagraph 4-a of paragraph (b) and subparagraph 2 of paragraph (h) of subdivision 9 as amended and subparagraph 13 of paragraph (a) of subdivision 9 as added by chapter 760 of the laws of 1992, subparagraph 14 of paragraph (a) of subdivision 9 as
added by section 101 and paragraphs (l) and (m) of subdivision 9 as added by section 102 of part A of chapter 56 of the laws of 1998, subparagraph 15 of paragraph (a) of subdivision 9 as amended by section 1 of part K3, subparagraph 16 of paragraph (b) of subdivision 9 as added by section 2 of part K3, subparagraph 17 of paragraph (b) of subdivision 9 as added by section 2 of part O3, and paragraphs (o), (p) and (q) of subdivision 9 as added by section 3 of part O3 of chapter 62 of the laws of 2003, subparagraph 18 of paragraph (a) of subdivision 9 as added by section 3 of part C and paragraph (o) of subdivision 9 as amended by section 2 of part E of chapter 59 of the laws of 2013, subparagraph 3 of paragraph (b) of subdivision 9 as amended by chapter 895 of the laws of 1975, subparagraph 4 of paragraph (b) and subparagraph 4 of paragraph (f) of subdivision 9 as amended by chapter 190 of the laws of 1990, subparagraph 15 of paragraph (b) of subdivision 9 as added by chapter 309 of the laws of 1996, subparagraph 18 of paragraph (b) of subdivision 9 as added by section 21 of part H of chapter 1 of the laws of 2003, subparagraph 19 of paragraph (b) of subdivision 9 as added by section 1 of part HH1 of chapter 57 of the laws of 2008, paragraphs (c-2) and (c-3) of subdivision 9 as added by section 10 of part Y of chapter 63 of the laws of 2000, paragraph (g) of subdivision 9 as added by chapter 178 of the laws of 1965, subparagraph 1 and clauses (B) and (C) of subparagraph 3 of paragraph (g) of subdivision 9 as amended by chapter 613 of the laws of 1976, clause (A) of subparagraph 1 of paragraph (g) of subdivision 9 as separately amended by chapters 675 and 836 of the laws of 1977, clause (B) of subparagraph 1, clause (A) of subparagraph 2 and clause (A) of subparagraph 3 of paragraph (g) of subdivision 9 as amended by chapter 675 of the laws of 1977, item 1 of clause (B) of subparagraph 1 of paragraph (g) of subdivision 9 as amended by chapter 972 of the laws of 1984, clause (B) of subparagraph 2 of paragraph (g) of subdivision 9 as amended by chapter 365 of the laws of 1979, clause (C) of subparagraph 2 of paragraph (g) of subdivision 9 as amended by chapter 1005 of the laws of 1970, paragraph (h) of subdivision 9 as amended by chapter 606 of the laws of 1984, paragraph (n) of subdivision 9 as added by section 1 of part O of chapter 85 of the laws of 2002, subdivision 12 as added by chapter 828 of the laws of 1977, subdivision 19 as added by chapter 681 of the laws of 1997, is amended to read as follows:

§ 208. Definitions. As used in this article:
S. 6359--D 6 A. 8559--D

1. The term "corporation" includes (a) an association within the meaning of paragraph three of subdivision (a) of section seventy-seven hundred one of the internal revenue code (including a limited liability company), (b) a joint-stock company or association, (c) a publicly traded partnership treated as a corporation for purposes of the internal revenue code pursuant to section seventy-seven hundred four thereof and (d) any business conducted by a trustee or trustees wherein interest or ownership is evidenced by certificate or other written instrument. "DISC" and "former DISC" mean any corporation which meets the requirements of subsection (a) of section nine hundred ninety-two of the internal revenue code.

1-A. The term "New York S corporation" means, with respect to any taxable year, a corporation subject to tax under this article for which an election is in effect pursuant to subsection (a) of section sixty of this chapter for such year, any such year shall be denominated a "New York S year", and such election shall be denominated a "New York S election". The term "New York C corporation" means, with respect to any taxable year, a corporation subject to tax under this article which is not a New York S corporation, and any such year shall be denominated a "New York C year". The term "termination year" means any taxable year of a corporation during which the New York S election terminates on a day other than the first day of such year. The portion
of the taxable year ending before the first day for which such termin-
ination is effective shall be denominated the "S short year", and the
portion of such year beginning on such first day shall be denominated
the "C short year". The term "New York S termination year" means any
termination year which is not also an S termination year for federal
purposes.

1-B. The term "QSSS" means a corporation which is a qualified subchap-
ter S subsidiary as defined in subparagraph (B) of paragraph three of
subsection (b) of section thirteen hundred sixty-one of the internal
revenue code. The term "exempt QSSS" means a QSSS exempt from tax under
this article as provided in paragraph (k) of subdivision nine of this
section, or a QSSS described in subclause (i) of clause (B) of subpara-
graph two of paragraph (k) of subdivision nine of this section, wherein
the parent corporation of the QSSS is subject to tax under this article,
and the assets, liabilities, income and deductions of the QSSS are
treated as the assets, liabilities, income and deductions of the parent
corporation. Where a QSSS is an exempt QSSS, then for all purposes under
this article:

(a) the assets, liabilities, income, deductions, property, payroll,
receipts, capital, credits, and all other tax attributes and elements of
economic activity of the QSSS shall be deemed to be those of the parent
corporation,
(b) the stocks, bonds and other securities issued by, and any indebt-
edness from, the QSSS shall not be subsidiary investment or business
capital of the parent corporation,
(c) transactions between the parent corporation and the QSSS, includ-
ing the payment of interest and dividends, shall not be taken into
account, and
(d) general executive officers of the QSSS shall be deemed to be
general executive officers of the parent corporation.

2. The term "taxpayer" means any corporation subject to tax under this
article[.]

3. The term "subsidiary" means a corporation of which over fifty
percent of the number of shares of stock entitling the holders thereof
to vote for the election of directors or trustees is owned by the
taxpayer[.]

4. The term "subsidiary capital" means investments in the stock of
subsidiaries and any indebtedness from subsidiaries, exclusive of
accounts receivable acquired in the ordinary course of trade or business
for services rendered or for sales of property held primarily for sale
to customers, whether or not evidenced by written instrument, on which
interest is not claimed and deducted by the subsidiary for purposes of
taxation under article nine-A, thirty-two or thirty-three of this chap-
ter, provided, however, that, in the discretion of the commissioner,
there shall be deducted from subsidiary capital any liabilities which
are directly or indirectly attributable to subsidiary capital] "stock"
means an interest in a corporation that is treated as equity for federal
income tax purposes.

5. (a) The term "investment capital" means investments in stocks[,
] that are held
by the taxpayer for more than six consecutive months but are not held
for sale to customers in the regular course of business, [exclusive of
subsidiary capital] or, if the taxpayer makes the election provided for
in subparagraph one of paragraph (a) of subdivision five of section two
hundred ten-A of this article, are not qualified financial instruments
as described in subdivision five of section two hundred ten-A of this
article. Stock in a corporation that is conducting a unitary business
with the taxpayer, stock in a corporation that is included in a combined
report with the taxpayer pursuant to the commonly owned group election
in subdivision three of section two hundred ten-C of this article, and
stock issued by the taxpayer[,
] provided, however, that, in the
discretion of the commissioner, there] shall not constitute investment
capital. For purposes of this subdivision, if the taxpayer owns or
controls, directly or indirectly, less than twenty percent of the voting
power of the stock of a corporation, that corporation will be presumed
to be conducting a business that is not unitary with the business of the
taxpayer.

(b) There shall be deducted from investment capital any liabilities
which are directly or indirectly attributable to investment capital[; and
provided, further, that investment] If the amount of those liabil-
ities exceeds the amount of investment capital, the amount of investment
capital will be zero.

(c) Investment capital shall not include any such investments the
income from which is excluded from entire net income pursuant to the
provisions of paragraph (c-1) of subdivision nine of this section, and
that investment capital shall be computed without regard to liabilities
directly or indirectly attributable to such investments, but only if air
 carriers organized in the United States and operating in the foreign
country or countries in which the taxpayer has its major base of oper-
ations and in which it is organized, resident or headquartered (if not
in the same country as its major base of operations) are not subject to
any tax based on or measured by capital imposed by such foreign country
or countries or any political subdivision thereof, or if taxed, are
provided an exemption, equivalent to that provided for herein, from any
tax based on or measured by capital imposed by such foreign country or
countries and from any such tax imposed by any political subdivision
thereof[;]

(d) If a taxpayer acquires stock during the second half of its taxable
year and owns that stock on the last day of the taxable year, it will be
presumed that the taxpayer held that stock for more than six consecutive
months during the taxable year. However, if the taxpayer does not in
fact hold that stock for more than six consecutive months, the taxpayer
must increase its total business capital in the immediately succeeding
taxable year by the amount included in investment capital for that
stock, net of any liabilities attributable to that stock computed as
provided in paragraph (b) of this subdivision and must increase its
business income in the immediately succeeding taxable year by the amount
of income and net gains (but not less than zero) from that stock
included in investment income, less any interest deductions directly or
indirectly attributable to that stock, as provided in subdivision six of
this section.

(e) When income or gain from a debt obligation or other security
cannot be apportioned to the state using the business allocation
percentage as a result of United States constitutional principles, the
debt obligation or other security will be included in investment capi-
tal.

(f) For purposes of determining whether a taxpayer has held a security
for more than six consecutive months, the commissioner shall take into
account offsetting positions the taxpayer takes in such or similar secu-
rities.

6. (a) The term "investment income" means income, including capital
gains in excess of capital losses, from investment capital, to the
extent included in computing entire net income, less, [a] [i] in the
discretion of the commissioner, any interest deductions allowable in
computing entire net income which are directly or indirectly attribut-
able to investment capital or investment income, and [b] such portion
of any net operating loss deduction allowable in computing entire net
income, as the investment income, before such deduction, bears to entire
net income, before such deduction] (ii) the taxpayer’s loss, deduction
and/or expense attributable to any transaction, or series of trans-
actions, entered into to manage the risk of price changes or currency
fluctuations with respect to any item of investment capital that is held
or to be held by the taxpayer, or the aggregate investment capital that is held or to be held by the taxpayer, if all of the risk, or all but a de minimis amount of the risk, is with respect to investment capital, provided, however, that in no case shall investment income exceed entire net income. If the amount subtracted under subparagraph (i) or subparagraph (ii) of this paragraph or under both of those subparagraphs exceeds investment income, the excess of such amount over investment income must be added back to entire net income.

(b) In lieu of subtracting from investment income the amount of those interest deductions, the taxpayer may elect to reduce its total investment income by forty percent. If the taxpayer makes this election, the taxpayer must also make the elections provided for in paragraphs (b) and (c) of subdivision six-a of this section. A taxpayer which does not make this election because it has no investment capital will not be precluded from making those other elections.

(c) Investment income shall not include any amount treated as dividends pursuant to section seventy-eight of the internal revenue code.

6-a. (a) The term "other exempt income" means the sum of exempt CFC income and exempt unitary corporation dividends.

(b) "Exempt CFC income" means the income required to be included in the taxpayer's federal gross income pursuant to subsection (a) of section 951 of the internal revenue code, received from a corporation that is conducting a unitary business with the taxpayer but is not included in a combined report with the taxpayer, less, in the discretion of the commissioner, any interest deductions directly or indirectly attributable to that income. In lieu of subtracting from its exempt CFC income the amount of those interest deductions, the taxpayer may elect to reduce its total exempt CFC income by forty percent. If the taxpayer makes this election, the taxpayer must also make the elections provided for in paragraph (b) of subdivision six of this section and paragraph (c) of this subdivision. A taxpayer which does not make this election because it has no exempt CFC income will not be precluded from making those other elections.

(c) "Exempt unitary corporation dividends" means those dividends from a corporation that is conducting a unitary business with the taxpayer but is not included in a combined report with the taxpayer, less, in the discretion of the commissioner, any interest deductions directly or indirectly attributable to such income. Other than dividend income received from corporations that are taxable under a franchise tax imposed by article nine or article thirty-three of this chapter or would be taxable under a franchise tax imposed by article nine or article thirty-three of this chapter if subject to tax, in lieu of subtracting from this dividend income those interest deductions, the taxpayer may elect to reduce the total amount of this dividend income by forty percent. If the taxpayer makes this election, the taxpayer must also make the elections provided for in paragraph (b) of subdivision six of this section and paragraph (b) of this subdivision. A taxpayer which does not make this election because it has not received any exempt unitary corporation dividends or is precluded from making this election for dividends received from corporations taxable under a franchise tax imposed by article nine or article thirty-three of this chapter or would be taxable under a franchise tax imposed by article nine or article thirty-three of this chapter if subject to tax will not be precluded from making those other elections.

(d) If the taxpayer attributes interest deductions to other exempt income and the amount subtracted exceeds other exempt income, the excess of the interest deductions over other exempt income must be added back to entire net income. In no case shall other exempt income exceed entire net income.

(e) Other exempt income shall not include any amount treated as dividends pursuant to section seventy-eight of the internal revenue code.
7. (a) The term "business capital" means all assets, other than investment capital and stock issued by the taxpayer, less liabilities not deducted from investment capital [except that cash on hand and on deposit shall be treated as investment capital or as business capital as the taxpayer may elect]. Business capital shall include only those assets the income, loss or expense of which are properly reflected (or would have been properly reflected if not fully depreciated or expensed or depreciated or expensed to a nominal amount) in the computation of entire net income for the taxable year.

(b) Provided, however, "business capital" shall not include assets to the extent employed for the purpose of generating income which is excluded from entire net income pursuant to the provisions of paragraph (c-1) of subdivision nine of this section and shall be computed without regard to liabilities directly or indirectly attributable to such assets, but only if air carriers organized in the United States and operating in the foreign country or countries in which the taxpayer has its major base of operations and in which it is organized, resident or headquartered (if not in the same country as its major base of operations) are not subject to any tax based on or measured by capital imposed by such foreign country or countries or any political subdivision thereof, or if taxed, are provided an exemption, equivalent to that provided for herein, from any tax based on or measured by capital imposed by such foreign country or countries and from any such tax imposed by any political subdivision thereof.

8. The term "business income" means entire net income minus investment income and other exempt income. In no event shall the sum of investment income and other exempt income exceed entire net income. If the taxpayer makes the election provided for in subparagraph one of paragraph (a) of subdivision five of section two hundred ten-A of this article, then all income from qualified financial instruments shall constitute business income.

8-A. Provided, however, that with respect to a DISC or a former DISC, the following provisions shall apply:

(a) investments in the stocks, bonds or other securities of a DISC or any indebtedness from a DISC shall not be treated as either subsidiary capital or investment capital under subdivisions four or subdivision five of this section,

(b) any amounts deemed distributed from a DISC or a former DISC which are taxable as dividends pursuant to subsection (b) of section nine hundred ninety-five of the internal revenue code of nineteen hundred fifty-four shall be treated as business income, except any such amounts from a former DISC attributable to amounts includible in a taxpayer's entire net income for a prior taxable year under subparagraph (B) of paragraph (i) of subdivision nine of this section shall be excluded from entire net income,

(c) any gain recognized for federal income tax purposes on the disposition of stock in a DISC, and any gain recognized on the disposition of stock in a former DISC, includible in gross income as a dividend pursuant to subsection (c) of section nine hundred ninety-five of the internal revenue code of nineteen hundred fifty-four, shall be treated as business income, and

(d) except as provided in paragraph (i) of subdivision nine of this section, any actual distribution from a DISC or a former DISC shall be treated as business income except an actual distribution which for federal income tax purposes is treated as made out of "other earnings and profits" under section nine hundred ninety-six of the internal revenue code of nineteen hundred fifty-four, in which case such actual distribution shall be treated as either subsidiary income or investment income under this article.

8-B. (a) The term "minimum taxable income" shall mean the entire net
income of the taxpayer for the taxable year:

(1) increased by the amount of the federal items of tax preference set forth in section fifty-seven of the internal revenue code (with the modifications set forth in paragraph (b) of this subdivision), which items of tax preference shall have the same meaning and be computed in the same manner as under section fifty-seven of the internal revenue code;

(2) determined with the federal adjustments described in paragraph (c) of this subdivision, which adjustments shall have the same meaning and be computed in the same manner as under sections fifty-six and fifty-eight of the internal revenue code;

(3) increased by the net operating loss deduction otherwise allowed under paragraph (f) of subdivision nine of this section, and

(4) reduced, for taxable years beginning after nineteen hundred ninety-three, by the alternative net operating loss deduction, as defined in paragraph (d) of this subdivision.

(b) The federal items of tax preference referred to hereinabove shall be modified by deducting "tax-exempt interest" and "accelerated depreciation or amortization on certain property placed in service before January 1, 1987", as determined under paragraphs five and seven of subsection (a) of section fifty-seven of the internal revenue code.

(c) The adjustments referred to hereinabove shall be:

(1) "Depreciation" as determined under paragraph one of subsection (a) of section fifty-six of the internal revenue code. For purposes of this subparagraph, the depreciation item of adjustment provided for here shall not include any amount attributable to property for which the tax benefits of the accelerated cost recovery system are not available under this article by reason of subparagraph ten of paragraph (b) of subdivision nine of this section;

(2) "Mining exploration and development costs" as determined under paragraph two of subsection (a) of section fifty-six of the internal revenue code;

(3) "Treatment of certain long-term contracts" as determined under paragraph three of subsection (a) of section fifty-six of the internal revenue code;

(4) "Installment sales of certain property" as determined under paragraph six of subsection (a) of section fifty-six of the internal revenue code;

(5) "Circulation expenditures of personal holding companies" as determined under subparagraph (C) of paragraph two of subsection (b) of section fifty-six of the internal revenue code;

(6) "Merchant marine capital construction funds" as determined under paragraph two of subsection (c) of section fifty-six of the internal revenue code;

(7) "Disallowance of passive activity loss" as determined under subsection (b) of section fifty-eight of the internal revenue code; and

(8) "Adjusted basis", as it appears in paragraph seven of subsection (a) of section fifty-six of the internal revenue code, but without taking into account the references therein to paragraph five of subsection (a) of section fifty-six of the internal revenue code.

(d) The term "alternative net operating loss deduction" means the net operating loss deduction allowed for the taxable year under paragraph (f) of subdivision nine of this section, except as provided herein.

(1)(A) The net operating loss for any year beginning after nineteen hundred eighty-nine which is included in determining such deduction shall be determined with the adjustments provided in subparagraph two of paragraph (a) of this subdivision, and shall be reduced by the items of tax preference determined under subparagraph one of paragraph (a) of this subdivision, attributable to such year. An item of tax preference shall be taken into account only to the extent such item increased the amount of the net operating loss for the taxable year under paragraph...
(f) of subdivision nine of this section.

(B) In the case of loss years beginning before nineteen hundred ninety, the amount of the net operating loss which may be carried over to taxable years beginning after nineteen hundred eighty-nine shall be equal to an amount which may be carried from the loss year to the first taxable year of the taxpayer beginning after nineteen hundred eighty-nine.

S. 6359--D 12 A. 8559--D

(2) In determining the amount of such deduction, loss carryforwards and carrybacks shall, subject to the provisions of subparagraph five of paragraph (f) of subdivision nine of this section, be computed in the manner set forth in paragraph two of subsection (b) of section one hundred seventy-two of the internal revenue code, except that, for the reference therein to taxable income, there shall be substituted the phrase "ninety percent of minimum taxable income determined without regard to the alternative net operating loss deduction".

(3) The amount of such deduction shall not exceed ninety percent of minimum taxable income determined without regard to such deduction, provided, however, the term "ninety percent" shall be read as "forty-five percent" with respect to taxable years beginning in nineteen hundred ninety-four.

(e) The tax commission may, whenever necessary in order to properly reflect the minimum taxable income of any taxpayer, determine the year or period in which any item of income or deduction shall be included, without regard to the method of accounting employed by the taxpayer.

(f) If the period covered by a report under this article is other than the period covered by the report to the United States treasury department, the minimum taxable income shall be appropriately modified pursuant to regulations promulgated by the tax commission.

9. The term "entire net income" means total net income from all sources, which shall be presumed the same as the entire taxable income [(but not alternative minimum taxable income)], which, except as herein-after provided in this subdivision,

(i) [which] the taxpayer is required to report to the United States treasury department, or

(ii) [which] the taxpayer would have been required to report to the United States treasury department if it had not made an election under subchapter s of chapter one of the internal revenue code, or

(iii) [which] the taxpayer, in the case of a corporation which is exempt from federal income tax (other than the tax on unrelated business taxable income imposed under section 511 of the internal revenue code) but which is subject to tax under this article, would have been required to report to the United States treasury department but for such exemption, [except as hereinafter provided, and subject to any modification required by paragraphs (d) and (e) of subdivision three of section two hundred ten of this article] or

(iv) in the case of an alien corporation that under any provision of the internal revenue code is not treated as a "domestic corporation" as defined in section seven thousand seven hundred one of such code is effectively connected with the conduct of a trade or business within the United States as determined under section 882 of the Internal Revenue Code.

(a) Entire net income shall not include:

(1) income, gains and losses from subsidiary capital which do not include the amount of a recovery in respect of any war loss except for such amounts from a former DISC which are treated as business income under subdivision eight-A of this section,

(2) fifty percent of dividends (A) other than from subsidiaries, and

(B) other than amounts treated as business income under subdivision eight-A of this section, on shares of stock which conform to the requirements of subsection (c) of section two hundred forty-six of the internal revenue code.]
(3) bona fide gifts,
S. 6359--D                         13                         A. 8559--D

(4) income and deductions with respect to amounts received from school
   districts and from corporations and associations, organized and operated
   exclusively for religious, charitable or educational purposes, no part
   of the net earnings of which inures to the benefit of any private share-
   holder or individual, for the operation of school buses,

(5) (i) any refund or credit of a tax imposed under this article,
   article twenty-three, or former article thirty-two of this chapter, for
   which tax no exclusion or deduction was allowed in determining the
   taxpayer's entire net income under this article, article twenty-three,
   or former article thirty-two of this chapter for any prior year, (ii) a
   refund or credit of general corporation tax allowed by subdivision elev-
   en of section 11-604 of the administrative code of the city of New York,
   or (iii) any refund or credit of a tax imposed under sections one
eighty-three, one hundred eighty-three-a, one hundred eighty-
four or one hundred eighty-four-a of this chapter, and

(6) any amount treated as dividends pursuant to section seventy-eight
   of the internal revenue code [and not otherwise deductible under subpar-
   agraphs one and two of this paragraph];

(7) that portion of wages and salaries paid or incurred for the taxa-
   ble year for which a deduction is not allowed pursuant to the provisions
   of section two hundred eighty-C of the internal revenue code.

(8) in the case of a taxpayer who is separately or as a partner of a
   partnership doing an insurance business as a member of the New York
   insurance exchange described in section six thousand two hundred one
   of the insurance law, any item of income, gain, loss or deduction of such
   business which is the taxpayer's distributive or pro rata share for
   federal income tax purposes or which the taxpayer is required to take
   into account separately for federal income tax purposes;

(9) for taxable years beginning after December thirty-first, nineteen
   hundred eighty-one, except with respect to property which is a qualified
   mass commuting vehicle described in subparagraph (D) of paragraph eight
   of subsection (f) of section one hundred sixty-eight of the internal
   revenue code (relating to qualified mass commuting vehicles) and proper-
   ty of a taxpayer principally engaged in the conduct of aviation (other
   than air freight forwarders acting as principal and like indirect air
   carriers) which is placed in service before taxable years beginning in
   nineteen hundred eighty-nine, any amount which is included in the
   taxpayer's federal taxable income solely as a result of an election made
   pursuant to the provisions of such paragraph eight as it was in effect
   for agreements entered into prior to January first, nineteen hundred
   eighty-four;

(10) for taxable years beginning after December thirty-first, nineteen
    hundred eighty-one, except with respect to property which is a qualified
    mass commuting vehicle described in subparagraph (D) of paragraph eight
    of subsection (f) of section one hundred sixty-eight of the internal
    revenue code (relating to qualified mass commuting vehicles) and proper-
    ty of a taxpayer principally engaged in the conduct of aviation (other
    than air freight forwarders acting as principal and like indirect air
    carriers) which is placed in service before taxable years beginning in
    nineteen hundred eighty-nine, any amount which the taxpayer could have
    excluded from federal taxable income had it not made the election
    provided for in such paragraph eight as it was in effect for agreements
    entered into prior to January first, nineteen hundred eighty-four;

(11) the amount deductible pursuant to paragraph (j) of this subdivi-
    sion; and

S. 6359--D                         14                         A. 8559--D

(12) upon the disposition of property to which paragraph (j) of this
    subdivision applies, the amount, if any, by which the aggregate of the
    amounts described in subparagraph ten of paragraph (b) of this subdivi-
tion attributable to such property exceeds the aggregate of the amounts described in paragraph (j) of this subdivision attributable to such property; and

(13) if the added tax provided for in either (i) former subdivision two of section one hundred eighty-two of this chapter (relating to real estate corporations) or (ii) former subdivision one of section two hundred nine of this chapter (relating to real estate corporations) has been imposed upon the taxpayer, any income which has been used in computing such tax.

(14) The amount deductible pursuant to paragraph (l) of this paragraph.

(15) In the case of an attorney-in-fact, with respect to which a mutual insurance company, which is an interinsurer or a reciprocal insurer and is subject to tax under subdivision (a) of section fifteen hundred ten of this chapter, has made the election provided for under section eight hundred thirty-five of the Internal Revenue Code, an amount equal to the excess, if any, of the amounts paid or incurred by such interinsurer or reciprocal insurer in the taxable year to the attorney-in-fact over the deduction allowed to such interinsurer or reciprocal insurer with respect to amounts paid or incurred in the taxable year to the attorney-in-fact under subsection (b) of such section eight hundred thirty-five of the Internal Revenue Code.

(16) In the case of a taxpayer subject to the modification provided by subparagraph sixteen of paragraph (b) of this subdivision, the amount required to be recaptured pursuant to subsection (d) of section 179 of the internal revenue code with respect to property upon which such modification was based.

(17) for taxable years beginning after December thirty-first, two thousand two, the amount deductible pursuant to paragraph (n-l) of this subsection.

(18) the amount of income or gain included in federal taxable income of a taxpayer that is a partner in a qualified entity or is a qualified entity that is located both within and without a New York state innovation hot spot, to the extent that the income or gain is attributable to the operations of a qualified entity at or as part of the New York state innovation hot spot as provided in section thirty-eight of this chapter.

(19) the amount computed pursuant to paragraph (r), (s) or (t) of this subdivision, but only the amount determined pursuant to one of such paragraphs.

(b) Entire net income shall be determined without the exclusion, deduction or credit of:

(1) the amount of any specific exemption or credit allowed in any law of the United States imposing any tax on or measured by the income of corporations, in the case of an alien corporation that under any provision of the internal revenue code is not treated as a "domestic corporation" as defined in section seven thousand seven hundred one of such code, (i) any part of any income from dividends or interest on any kind of stock, securities or indebtedness, but only if such income is treated as effectively connected with the conduct of a trade or business in the United States pursuant to section 864 of the internal revenue code, (ii) any income exempt from federal taxable income under any treaty obligation of the United States, but only if such income would be treated as effectively connected in absence of such exemption provided that such treaty obligation does not preclude the taxation of such income by a state, or (iii) any income which would be treated as effectively connected if such income were not excluded from gross income pursuant to subsection (a) of section 103 of the internal revenue code;

(2) any part of any income from dividends or interest on any kind of stock, securities or indebtedness, [except as provided in clauses (1) and (2) of paragraph (a) hereof,]
9 (3) Taxes on or measured by profits or income paid or accrued to the
10 United States[ or any of its possessions [or to any foreign country],
11 territories or commonwealths, including taxes in lieu of any of the
12 foregoing taxes otherwise generally imposed by [any foreign country or
13 by] any possession, territory or commonwealth of the United States,
14 (3-a) Taxes on or measured by profits or income, or which include
15 profits or income as a measure, paid or accrued to any other state of
16 the United States, or any political subdivision thereof, or to the
17 District of Columbia, including taxes expressly in lieu of any of the
18 foregoing taxes otherwise generally imposed by any other state of the
19 United States, or any political subdivision thereof, or the District of
20 Columbia;
21 (4) Taxes imposed under this article and article thirty-two as in
22 effect on December thirty-first, two thousand fourteen and sections one
23 hundred eighty-three, one hundred eighty-three-a, one hundred eighty-
24 four and one hundred eighty-four-a of this chapter,
25 (4-a) (A) [The entire amount allowable as an exclusion or deduction for
26 stock transfer taxes imposed by article twelve of this chapter in deter-
27 mining the entire taxable income which the taxpayer is required to
28 report to the United States treasury department but only to the extent
29 that such taxes are incurred and paid in market making transactions,
30 (B) in those instances where a credit for the special additional mort-
31 gage recording tax credit is allowed under [paragraph (a) of subdi-
32 vision [seventeen] nine of section two hundred [ten] ten-B of this arti-
33 cle, the amount allowed as an exclusion or deduction for the special
34 additional mortgage recording tax imposed by subdivision one-a of
35 section two hundred fifty-three of this chapter in determining the
36 entire taxable income which the taxpayer is required to report to the
37 United States treasury department, and [(C) (B) unless the credit
38 allowed pursuant to subdivision [seventeen] nine of section two hundred
39 [ten] ten-B of this article is reflected in the computation of the gain
40 or loss so as to result in an increase in such gain or decrease of such
41 loss, for federal income tax purposes, from the sale or other disposi-
42 tion of the property with respect to which the special additional mort-
43 gage recording tax imposed pursuant to subdivision one-a of section two
44 hundred fifty-three of this chapter was paid, the amount of the special
45 additional mortgage recording tax imposed by subdivision one-a of
46 section two hundred fifty-three of this chapter which was paid and which
47 is reflected in the computation of the basis of the property so as to
48 result in a decrease in such gain or increase in such loss for federal
49 income tax purposes from the sale or other disposition of the property
50 with respect to which such tax was paid.
51 (6) In the discretion of the tax commission, any amount of interest
52 directly or indirectly and any other amount directly or indirectly
53 attributable as a carrying charge or otherwise to subsidiary capital or
54 to income, gains or losses from subsidiary capital [any amount allowed
55 as a deduction for the taxable year under section 172 of the internal
56 revenue code, including carryovers of deductions from prior taxable
57 years.
(7) In the case of a taxpayer who is separately or as a partner of a
4 partnership doing an insurance business as a member of the New York
5 insurance exchange described in section six thousand two hundred one of
6 the insurance law, such taxpayer's distributive or pro rata share of the
7 allocated entire net income of such business as determined under
8 sections fifteen hundred three and fifteen hundred four of this chapter,
9 provided however, in the event such allocated entire net income is a
10 loss, such taxpayer's distributive or pro rata share of such loss shall
11 not be subtracted from federal taxable income in computing entire net
12 income under this subdivision.]
13 (8) For taxable years beginning after December thirty-first, nineteen
14 hundred eighty-one, except with respect to property which is a qualified
mass commuting vehicle described in subparagraph (D) of paragraph eight of subsection (f) of section one hundred sixty-eight of the internal revenue code (relating to qualified mass commuting vehicles) and property of a taxpayer principally engaged in the conduct of aviation (other than air freight forwarders acting as principal and like indirect air carriers) which is placed in service before taxable years beginning in nineteen hundred eighty-nine, any amount which the taxpayer claimed as a deduction in computing its federal taxable income solely as a result of an election made pursuant to the provisions of such paragraph eight as it was in effect for agreements entered into prior to January first, nineteen hundred eighty-four;

(9) for taxable years beginning after December thirty-first, nineteen hundred eighty-one, except with respect to property which is a qualified mass commuting vehicle described in subparagraph (D) of paragraph eight of subsection (f) of section one hundred sixty-eight of the internal revenue code (relating to qualified mass commuting vehicles) and property of a taxpayer principally engaged in the conduct of aviation (other than air freight forwarders acting as principal and like indirect air carriers) which is placed in service before taxable years beginning in nineteen hundred eighty-nine, any amount which the taxpayer would have been required to include in the computation of its federal taxable income had it not made the election permitted pursuant to such paragraph eight as it was in effect for agreements entered into prior to January first, nineteen hundred eighty-four;

(10) in the case of property placed in service in taxable years beginning before nineteen hundred ninety-four, for taxable years beginning after December thirty-first, nineteen hundred eighty-one, except with respect to property subject to the provisions of section two hundred eighty-F of the internal revenue code, property subject to the provisions of section one hundred sixty-eight of the internal revenue code which is placed in service in this state in taxable years beginning after December thirty-first, nineteen hundred eighty-four and property of a taxpayer principally engaged in the conduct of aviation (other than air freight forwarders acting as principal and like indirect air carriers) which is placed in service before taxable years beginning in nineteen hundred eighty-nine, the amount allowable as a deduction determined under section one hundred sixty-eight of the internal revenue code;

(11) upon the disposition of property to which paragraph (j) of this subdivision applies, the amount, if any, by which the aggregate of the amounts described in such paragraph (j) attributable to such property

exceeds the aggregate of the amounts described in subparagraph ten of this paragraph attributable to such property.

(15) Real property taxes paid on qualified agricultural property and deducted in determining federal taxable income, to the extent of the amount of the agricultural property tax credit allowed under subdivision [twenty-two] eleven of section two hundred [ten] ten-B of this article.

(16) In the case of a taxpayer which is not an eligible farmer as defined in paragraph (b) of subdivision [twenty-two] eleven of section two hundred [ten] ten-B of this article, the amount of any deduction claimed pursuant to section 179 of the internal revenue code with respect to a sport utility vehicle which is not a passenger automobile as defined in paragraph 5 of subsection (d) of section 280F of the internal revenue code.

(17) for taxable years beginning after December thirty-first, two thousand two, in the case of qualified property described in paragraph two of subsection k of section 168 of the internal revenue code, other than qualified resurgence zone property described in paragraph (g) of this subdivision, and other than qualified New York Liberty Zone property described in paragraph two of subsection b of section 1400L of the internal revenue code (without regard to clause (i) of subparagraph (C)
of such paragraph), which was placed in service on or after June first, 
two thousand three, the amount allowable as a deduction under section  
167 of the internal revenue code.

(18) Premiums paid for environmental remediation insurance, as defined  
in section twenty-three of this chapter, and deducted in determining  
federal taxable income, to the extent of the amount of the environmental  
remediation insurance credit allowed under such section twenty-three and  
subdivision thirty-five nineteen of section two hundred ten-B of  
this article.

(19) The amount of any deduction allowed pursuant to section one  
hundred ninety-nine of the internal revenue code.

(20) The amount of any federal deduction for taxes imposed under artic-  
le twenty-three of this chapter.

(20-a) The amount of any federal deduction for the excise tax on tele-  
communication services to the extent such taxes are used as the basis of  
the calculation of the tax-free NY area excise tax on telecommunication  
services credit allowed under subdivision forty-four of section two  
hundred ten-B of this article.

(21) The amount of any federal deduction for real property taxes to  
the extent such taxes are used as the basis of the calculation of the  
real property tax credit for manufacturers allowed under subdivision  
fourty-three of section two hundred ten-B of this article.

(c) Entire net income shall include income within and without the  
United States;

(c-1)(1) Notwithstanding any other provision of this article, in the  
case of a taxpayer which is a foreign air carrier holding a foreign air  
carrier permit issued by the United States department of transportation  
pursuant to section four hundred two of the federal aviation act of  
nineteen hundred fifty-eight, as amended, and which is qualified under  
subparagraph two of this paragraph, entire net income shall not include,  
and shall be computed without the deduction of, amounts directly or  
indirectly attributable to, (i) any income derived from the interna-  
tional operation of aircraft as described in and subject to the  
provisions of section eight hundred eighty-one of the internal revenue  
code, (ii) income without the United States which is derived from the  
operation of aircraft, and (iii) income without the United States which  
is of a type described in subdivision (a) of section eight hundred  
eighty-one of the internal revenue code except that it is derived from  
sources without the United States. Entire net income shall include  
income described in clauses (i), (ii) and (iii) of this subparagraph in  
the case of taxpayers not described in the previous sentence.

(2) A taxpayer is qualified under this subparagraph if air carriers  
organized in the United States and operating in the foreign country or  
countries in which the taxpayer has its major base of operations and in  
which it is organized, resident or headquartered (if not in the same  
country as its major base of operations) are not subject to any income  
tax or other tax based on or measured by income or receipts imposed by  
such foreign country or countries or any political subdivision thereof,  
or if so subject to such tax, are provided an exemption from such tax  
equivalent to that provided for herein.

(c-2) Adjustments by qualified public utilities. (1) In the case of a  
taxpayer which is a qualified public utility, entire net income shall be  
computed with the adjustments set forth in this paragraph.

(2) Definitions. (A) Qualified public utility. The term "qualified  
public utility" means a taxpayer which: (i) on December thirty-first,  
nineteen hundred ninety-nine, was subject to the ratemaking supervision  
of the state department of public service, and (ii) for the year ending  
on December thirty-first, nineteen hundred ninety-nine, was subject to  
tax under former section one hundred eighty-six of this chapter.

(B) Transition property. The term "transition property" means property  
placed in service by the taxpayer before January first, two thousand,
for which a depreciation deduction is allowed under section one hundred sixty-seven of the internal revenue code.

(3) Federal depreciation disallowed. With respect to transition property, the deduction for federal income tax purposes for depreciation shall not be allowed.

(4) New York depreciation. With respect to transition property, a deduction shall be allowed for the depreciation expense shown on the books and records of the taxpayer for the taxable year and determined in accordance with generally accepted accounting principles.

(5) Regulatory assets. A deduction shall be allowed for amounts recognized as expense on the books and records of the taxpayer for the taxable year, which amounts were recognized as expense for federal income tax purposes in a taxable year ending on or before December thirty-first, nineteen hundred ninety-nine, where: (A) such amounts represent expenditures which, when made, were charged to a deferred debit account or similar asset account on the books and records of the taxpayer, and where (B) the recognition of expense on the books and records of the taxpayer is matched by revenue stemming from a procedure or adjustment allowing the recovery of such expenditures, and where (C) such revenue is recognized for federal income tax purposes in the taxable year.

(6) Basis for gain or loss. (A) Recognition transactions. (i) General rule - book basis. Except as provided in subclause (ii) of this clause, where transition property is sold or otherwise disposed of in the taxable year in a transaction of the type requiring recognition of gain or loss for federal income tax purposes, the basis for determining the amount of such gain or loss under this article shall be the cost of the property less the accumulated depreciation on the property determined under subparagraph four of this paragraph.

(ii) Qualified gain - New York basis. Where a sale or disposition described in subclause (i) of this clause results in recognition of gain for federal income tax purposes, and where either (I) such recognition occurs in a taxable year ending after nineteen hundred ninety-nine and before two thousand ten, or (II) such recognition is with respect to a nuclear electric generating facility, the basis for determining the amount of such gain under this article shall be the cost of the property less the aggregate of the New York depreciation deductions on the property determined under subparagraph four of this paragraph.

(iii) No conversion of gain to loss. In the event that the basis determined under subclause (ii) of this clause results in determination of a loss on the sale or disposition of the property, no gain or loss shall be recognized under this article with respect to such sale or disposition.

(B) Nonrecognition transactions. (i) Carryover basis. (I) Where transition property is disposed of ("original disposition") in a transaction of a type requiring deferral of recognition of gain or loss for federal income tax purposes, and where (II) there is a subsequent recognition of gain or loss for federal income tax purposes ("clause B gain or loss"), the amount of which is determined by reference, in whole or in part, to the basis of such transition property ("underlying transition property"), then (III) the amount of such clause B gain or loss under this article shall be adjusted as provided in subclause (ii) or (iii) of this clause.

(ii) General rule - book basis adjustment. Except as provided in subclause (iii) of this clause, the amount of clause B gain shall be reduced, or the amount of clause B loss increased, by the amount by which the book basis of the underlying transition property on the date of original disposition (determined using the provisions of subclause (i) of clause (A) of this subparagraph) exceeds the federal income tax basis of such property on such date.

(iii) Qualified gain - New York basis adjustment. Where clause B gain

S. 6359--D                         19                         A. 8559--D
either (I) occurs in a taxable year ending after nineteen hundred ninety-nine and before two thousand ten, or (II) is with respect to a nuclear electric generating facility, the amount of such gain under this article shall be reduced, but not below zero, by the amount by which the New York basis of the underlying transition property on the date of original disposition (determined using the provisions of subclause (ii) of clause (A) of this subparagraph) exceeds the federal income tax basis of such property on such date.

(iv) Application to replacement property and transferee taxpayers.
This clause shall apply whether the clause B gain or loss: (I) is with respect to either transition property or depreciable property the basis of which is determined by reference to transition property, or (II) is recognized by either a qualified public utility or by a taxpayer which is a transferee of transition property (whether or not such transferee is a qualified public utility, notwithstanding subparagraph one of this paragraph).

(c-3) Depreciation adjustments by qualified power producers and pipeline companies. (1) In the case of a qualified taxpayer, entire net income shall be computed with the depreciation adjustments set forth in this paragraph.

(2) Definitions. (A) Qualified taxpayer. The term "qualified taxpayer" means a qualified power producer or a qualified pipeline.

(B) Qualified power producer. The term "qualified power producer" means a taxpayer which: (i) on December thirty-first, nineteen hundred ninety-nine, was not subject to the ratemaking supervision of the state department of public service, and (ii) for the year ending on December thirty-first, nineteen hundred ninety-nine, was subject to tax under former section one hundred eighty-six of this chapter on account of its being principally engaged in the business of supplying electricity.

(C) Qualified pipeline. The term "qualified pipeline" means a taxpayer which: (i) on December thirty-first, nineteen hundred ninety-nine, was subject to the ratemaking supervision of either the federal energy regulatory commission or the state department of public service, and (ii) for the year ending on December thirty-first, nineteen hundred ninety-nine, was subject to tax under sections one hundred eighty-three and one hundred eighty-four of this chapter on account of its being principally engaged in the business of pipeline transmission.

(D) Transition property. The term "transition property" means property placed in service by a qualified taxpayer before January first, two thousand, for which a depreciation deduction is allowed under section one hundred sixty-seven of the internal revenue code.

(3) Federal depreciation disallowed. With respect to transition property, the deduction for federal income tax purposes for depreciation shall not be allowed.

(4) New York depreciation. With respect to transition property, a deduction shall be allowed for the depreciation expense computed as provided in this subparagraph. (A) All transition property shown on the books and records of the taxpayer on January first, two thousand shall be treated as a single asset placed in service on such date. The New York basis for purposes of computing the depreciation deduction on such single asset shall be the net book value of such transition property determined on the first day of the federal taxable year ending in two thousand (or on the date any such property is placed in service, if later) adjusted as provided in clause (B) of this subparagraph.

(B) If transition property is sold or otherwise disposed of, the New York basis of the single asset shall be reduced on the date of such sale or disposition by the amount of the adjusted federal tax basis of such property on such date.

(C) The New York depreciation deduction allowed for any taxable year with respect to such single asset shall be computed using the straight-line method, a twenty-year life, and a salvage value of zero.
(D) For purposes of this subparagraph, the term "net book value" means cost reduced by accumulated depreciation shown on the books and records of the taxpayer and determined, in the case of a qualified power producer, in accordance with generally accepted accounting principles; and in the case of a qualified pipeline, in accordance with the taxpayer's regulatory reports filed with the federal energy regulatory commission or state department of public service.

(d) The commissioner may, whenever necessary in order properly to reflect the entire net income of any taxpayer, determine the year or period in which any item of income or deduction shall be included, without regard to the method of accounting employed by the taxpayer.

(e) The entire net income of any bridge commission created by act of congress to construct a bridge across an international boundary means its gross income less the expense of maintaining and operating its properties, the annual interest upon its bonds and other obligations, and the annual charge for the retirement of such bonds or obligations at maturity.

(f) A net operating loss deduction shall be allowed which shall be presumed the same as the net operating loss deduction allowed under section one hundred seventy-two of the internal revenue code, or which would have been allowed if the taxpayer had not made an election under subchapter s of chapter one of the internal revenue code, except that in every instance where such deduction is allowed under this article:

1. any net operating loss included in determining such deduction shall be adjusted to reflect the inclusions and exclusions from entire net income required by paragraphs (a), (b) and (g) hereof,

2. such deduction shall not include any net operating loss sustained during any taxable year beginning prior to January first, nineteen hundred sixty-one, or during any taxable year in which the taxpayer was not subject to the tax imposed by this article,

3. such deduction shall not exceed the deduction for the taxable year allowed under section one hundred seventy-two of the internal revenue code, or the deduction for the taxable year which would have been allowed if the taxpayer had not made an election under subchapter s of chapter one of the internal revenue code,

4. in the case of a New York S corporation, such deduction shall not include any net operating loss sustained during a New York C year or during a New York S year beginning prior to nineteen hundred ninety, and in the case of a New York C corporation, such deduction shall not include any net operating loss sustained during a New York S year, provided, however, a New York S year shall be treated as a taxable year for purposes of determining the number of taxable years to which a net operating loss may be carried back or carried forward, and

5. the net operating loss deduction allowed under section one hundred seventy-two of the internal revenue code shall for purposes of this paragraph be determined as if the taxpayer had elected under such section to relinquish the entire carryback period with respect to net operating losses, except with respect to the first ten thousand dollars of each of such losses, sustained during taxable years ending after June thirtieth, nineteen hundred eighty-nine.

(g) For taxable years commencing prior to January first, nineteen hundred eighty-seven, at the election of the taxpayer, a deduction shall be allowed for expenditures paid or incurred during the taxable year for the construction, reconstruction, erection or improvement of either industrial waste treatment facilities or air pollution control facilities, or, with respect to taxable years beginning on or after January first, nineteen hundred seventy-seven and before January first, nineteen hundred eighty-one, industrial waste treatment controlled process facilities or air pollution controlled process facilities.

1. (A) The term "industrial waste treatment facilities" shall
mean facilities for the treatment, neutralization or stabilization of industrial waste and other wastes (as the terms "industrial waste" and "other wastes" are defined in section 17-0105 of the environmental conservation law) from a point immediately preceding the point of such treatment, neutralization or stabilization to the point of disposal, including the necessary pumping and transmitting facilities.

(2) The term "industrial waste treatment controlled process facility" shall mean such portion of the cost of an industrial production facility designed for the purpose of obviating the need for industrial waste treatment facilities as defined in item one of this clause as shall exceed the cost of an industrial production facility of equal production capacity which if constructed would require industrial waste treatment facilities to meet emission standards in compliance with the provisions of the environmental conservation law and the codes, rules, regulations, permits or orders issued pursuant thereto but only to the extent of the cost of such industrial waste treatment facilities.

S. 6359--D                         22                         A. 8559--D

(B) (1) The term "air pollution control facilities" shall mean facilities which remove, reduce, or render less noxious air contaminants emitted from an air contamination source (as the terms "air contaminant" and "air contamination source" are defined in section 19-0107 of the environmental conservation law) from a point immediately preceding the point of such removal, reduction or rendering to the point of discharge of air, meeting emission standards as established by the department of environmental conservation, but excluding such facilities installed for the primary purpose of salvaging materials which are usable in the manufacturing process or are marketable and excluding those facilities which rely for their efficacy on dilution, dispersion or assimilation of air contaminants in the ambient air after emission. Such term shall further include flue gas desulfurization equipment and attendant sludge disposal facilities, fluidized bed boilers, precombustion coal cleaning facilities or other facilities that conform with this subdivision and which comply with the provisions of the state acid deposition control act set forth in title nine of article nineteen of the environmental conservation law.

(2) The term "air pollution controlled process facility" shall mean such portion of the cost of an industrial production facility designed for the purpose of obviating the need for air pollution control facilities as defined in item one of this clause as shall exceed the cost of an industrial production facility of equal productive capacity which if constructed would require air pollution control facilities to meet emission standards as established pursuant to title three of article nineteen of the environmental conservation law but only to the extent of the cost of such air pollution control facilities.

(2) However, such deduction shall be allowed only

(A) with respect to tangible property which is depreciable, pursuant to section one hundred sixty-seven of the internal revenue code, having a situs in this state and used in the taxpayer's trade or business, the construction, reconstruction, erection or improvement of which, in the case of industrial waste treatment facilities, is initiated on or after January first, nineteen hundred sixty-five or which, in the case of air pollution control facilities, is initiated on or after January first, nineteen hundred sixty-six, or which in the case of industrial waste treatment controlled process facilities or air pollution controlled process facilities is initiated on and after January first, nineteen hundred seventy-seven, and

(B) on condition that such facilities have been certified by the state commissioner of environmental conservation or his designated representative, pursuant to section 19-0309 of the environmental conservation law, as complying with applicable provisions of the environmental conservation law, the public health law, the state sanitary code and codes, rules, regulations, permits or orders issued pursuant thereto,
and
(C) on condition that entire net income for the taxable year and all succeeding taxable years be computed without any deductions for such expenditures or for depreciation or amortization of the same property other than the deductions allowed by this paragraph (g), except to the extent that the basis of the property may be attributable to factors other than such expenditures, or in case a deduction is allowable pursuant to this paragraph for only a part of such expenditures, on condition that any deduction allowed for federal income tax purposes for such expenditures or for depreciation or amortization of the same property be proportionately reduced in computing entire net income for the taxable year and all succeeding taxable years, and

(D) where the election provided for in paragraph (d) of subdivision three of section two hundred ten of this chapter has not been exercised in respect to the same property.

(3) (A) If expenditures in respect to an industrial waste treatment facility, an air pollution control facility, an industrial waste treatment controlled process facility or an air pollution controlled process facility have been deducted as provided herein and if within ten years from the end of the taxable year in which such deduction was allowed such property or any part thereof is used for the primary purpose of salvaging materials which are usable in the manufacturing process or are marketable, the taxpayer shall report such change of use in its report for the first taxable year during which it occurs, and the tax commission may recompute the tax for the year or years for which such deduction was allowed and any carryback or carryover year, and may assess any additional tax resulting from such recomputation within the time fixed by paragraph nine of subsection (c) of section ten hundred eighty-three of this chapter.

(B) If a deduction is allowed as herein provided for expenditures paid or incurred during any taxable year on the basis of a temporary certificate of compliance issued pursuant to the environmental conservation law and if the taxpayer fails to obtain a permanent certificate of compliance upon completion of the facilities with respect to which such temporary certificate was issued, the taxpayer shall report such failure in its report for the taxable year during which such facilities are completed, and the tax commission may recompute the tax for the year or years for which such deduction was allowed and any carryback or carryover year, and may assess any additional tax resulting from such recomputation within the time fixed by paragraph nine of subsection (c) of section ten hundred eighty-three of this chapter.

(C) If a deduction is allowed as herein provided for expenditures paid or incurred during any taxable year in respect to an air pollution control facility on the basis of a certificate of compliance issued pursuant to the environmental conservation law and the certificate is revoked pursuant to subdivision three of section 19-0309 of the environmental conservation law, the tax commission may recompute the tax for the year or years for which the facility is not or was not in compliance with the applicable provisions of the environmental conservation law, the state sanitary code or codes, rules, regulations, permits or orders promulgated pursuant thereto, and for which a deduction was allowed, as well as for any carryback or carryover year to which such deduction was carried, and may assess any additional tax resulting from such recomputation within the time fixed by paragraph nine of subsection (c) of section ten hundred eighty-three of this chapter.

(4) In any taxable year when property is sold or otherwise disposed of, with respect to which a deduction has been allowed pursuant to this paragraph, such deduction shall be disregarded in computing gain or loss, and the gain or loss on the sale or other disposition of such property shall be the gain or loss entering into the computation of entire taxable income which the taxpayer is required to report to the

S. 6359--D  23  A. 8559--D
(h) If the period covered by a report under this article is other than the period covered by the report to the United States treasury department,

S. 6359--D 24 A. 8559--D

(1) except as provided in subparagraph two hereof, entire net income shall be determined by multiplying the taxable income reported to such department (as adjusted pursuant to the provisions of this article) by the number of calendar months or major parts thereof covered by the report under this article and dividing by the number of calendar months or major parts thereof covered by the report to such department. If it shall appear that such method of determining entire net income does not properly reflect the taxpayer's income during the period covered by the report under this article, the tax commissioner shall be authorized in its discretion to determine such entire net income solely on the basis of the taxpayer's income during the period covered by its report under this article.

(2) In the case of a New York S termination year, an equal portion of entire net income shall be assigned to each day of such year. The portion of such entire net income thereby assigned to the S short year and the C short year shall be included in the respective reports for the S short year and the C short year under this article. However, where paragraph three of subsection (s) of section six hundred twelve of this chapter applies, the portion of such entire net income assigned to the S short year and the C short year shall be determined under normal tax accounting rules.

(i) With respect to a DISC which during any taxable year or reporting year (1) received more than five percent of its gross sales from the sale of inventory or other property which it purchased from its stockholders, (2) received more than five percent of its gross rentals from the rental of property which it purchased or rented from its stockholders or (3) received more than five percent of its total receipts other than sales and rentals from its stockholders, the following provisions shall apply.

(A) For any taxable year in which sub-paragraph (B) of this paragraph is in effect and not rendered invalid, a DISC meeting the above test shall be exempt from all taxes imposed by this article.

(B) Supplemental to the provisions of subdivision five of section two hundred eleven of this article, any taxpayer required to compute a tax under this article, which during the taxable year being reported was a stockholder in any DISC meeting the test prescribed in this paragraph, shall for any taxable year ending after December thirty-first, nineteen hundred seventy-one adjust each item of its receipts, expenses, assets and liabilities, as otherwise computed under this article, by adding thereto its attributable share of each such DISC's receipts, expenses, assets and liabilities as reportable by each such DISC to the United States Treasury Department for its annual reporting period ending during the current taxable year of such taxpayer; provided, however, (1) that all transactions between the taxpayer and each such DISC shall be eliminated from the taxpayer's adjusted receipts, expenses, assets and liabilities; (2) that the taxpayer's entire net income as otherwise computed under this section, shall be reduced by subtracting the amount of the deemed distribution of current income, if any, from each such DISC already included in the entire net income of such taxpayer by virtue of having been included in its entire taxable income for that taxable year as reported to the United States Treasury Department; and (3) that in the event this paragraph should be rendered invalid, all DISC's and their stockholders taxable hereunder shall be taxed instead under the remaining portions of this article.

(j) In the case of property placed in service in taxable years beginning before nineteen hundred ninety-four, for taxable years beginning
after December thirty-first, nineteen hundred eighty-one, except with respect to property subject to the provisions of section two hundred eighty-F of the internal revenue code and property subject to the provisions of section one hundred sixty-eight of the internal revenue code which is placed in service in this state in taxable years beginning after December thirty-first, nineteen hundred eighty-four, and provided a deduction has not been excluded from entire net income pursuant to subparagraph eight of paragraph (b) of this subdivision, a taxpayer shall be allowed with respect to property which is subject to the provisions of section one hundred sixty-eight of the internal revenue code the depreciation deduction allowable under section one hundred sixty-seven of the internal revenue code as such section would have applied to property placed in service on December thirty-first, nineteen hundred eighty. This paragraph shall not apply to property of a taxpayer principally engaged in the conduct of aviation (other than air freight forwarders acting as principal and like indirect air carriers) which is placed in service before taxable years beginning in nineteen hundred eighty-nine.

(k) QSSS. (1) New York S corporation. In the case of a New York S corporation which is the parent of a qualified subchapter S subsidiary (QSSS) with respect to a taxable year:
(A) where the QSSS is not an excluded corporation,
(i) in determining the entire net income of such parent corporation, all assets, liabilities, income and deductions of the QSSS shall be treated as assets, liabilities, income and deductions of the parent corporation, and
(ii) the QSSS shall be exempt from all taxes imposed by this article, and
(B) where the QSSS is an excluded corporation, the entire net income of the parent corporation shall be determined as if the federal QSSS election had not been made.
(2) New York C corporation. In the case of a New York C corporation which is the parent of a QSSS with respect to a taxable year:
(A) where the QSSS is a taxpayer,
(i) in determining the entire net income of such parent corporation, all assets, liabilities, income and deductions of the QSSS shall be treated as assets, liabilities, income and deductions of the parent corporation, and
(ii) the QSSS shall be exempt from all taxes imposed by this article, and
(B) where the QSSS is not a taxpayer,
(i) if the QSSS is not an excluded corporation, the parent corporation may make a QSSS inclusion election to include all assets, liabilities, income and deductions of the QSSS as assets, liabilities, income and deductions of the parent corporation, and
(ii) in the absence of such election, or where the QSSS is an excluded corporation, the entire net income of the parent corporation shall be determined as if the federal QSSS election had not been made.
(3) Non-New York S corporation not excluded. In the case of an S corporation which is not a taxpayer and not an excluded corporation, and which is the parent of a QSSS which is a taxpayer, the shareholders of the parent corporation shall be entitled to make the New York S election under subsection (a) of section six hundred sixty of this chapter.
(A) For any taxable year for which such election is in effect, the parent corporation shall be subject to tax under this article as a New York S corporation, and the provisions of clause (A) of subparagraph one of this paragraph shall apply.
(B) For any taxable year for which such election is not in effect, the QSSS shall be a New York C corporation, and the entire net income of the QSSS shall be determined as if the federal QSSS election had not been
made. For purposes of such determination, the taxable year of the parent
corporation shall constitute the taxable year of the QSSS, excluding,
however, any portion of such year during which the QSSS is not a taxpayer.

(4) S corporation excluded. In the case of an S corporation which is
an excluded corporation and which is the parent of a QSSS which is a
taxpayer, the QSSS shall be a New York C corporation and the provisions
of clause (B) of subparagraph three of this paragraph shall apply.

(5) Excluded corporation. The term "excluded corporation" means a
corporation subject to tax under sections one hundred eighty-three
through one hundred eighty-six, inclusive, or article thirty-two or
thirty-three of this chapter, or a foreign corporation not taxable by
this state which, if it were taxable, would be subject to tax under any
of such sections or articles.

(6) Taxpayer. For purposes of this paragraph, the term "taxpayer"
means a parent corporation or QSSS subject to tax under this article,
determined without regard to the provisions of this paragraph.

(7) QSSS inclusion election. The election under subclause (i) of
clause (B) of subparagraph two of this paragraph shall be effective for
the taxable year for which made and for all succeeding taxable years of
the corporation until such election is terminated. An election or termi-
nation shall be made on such form and in such manner as the commissioner
may prescribe by regulation or instruction.

(l) Emerging technology investment deferral. In the case of any sale
of a qualified emerging technologies investment held for more than thirty-
six months and with respect to which the taxpayer elects the applica-
tion of this paragraph, gain from such sale shall be recognized only to
the extent that the amount realized on such sale exceeds the cost of any
qualified emerging technologies investment purchased by the taxpayer
during the three hundred sixty-five-day period beginning on the date of
such sale, reduced by any portion of such cost previously taken into
account under this paragraph. For purposes of this paragraph the follow-
ing shall apply:

(1) A qualified investment is stock of a corporation or an interest,
other than as a creditor, in a partnership or limited liability company
that was acquired by the taxpayer as provided in Internal Revenue Code §
1202(c)(1)(B), except that the reference to the term "stock" in such
section shall be read as "investment," or by the taxpayer from a person
who had acquired such stock or interest in such a manner.

(2) A qualified emerging technology investment is a qualified invest-
ment, that was held by the taxpayer for at least thirty-six months, in a
company defined in paragraph (c) of subdivision one of section thirty-
one hundred two of the public authorities law or an investment in a
partnership or limited liability company that is taxed as a partnership
to the extent that such partnership or limited liability company invests
in qualified emerging technology companies.

(3) For purposes of determining whether the nonrecognition of gain
under this subsection applies to a qualified emerging technologies
investment that is sold, the taxpayer's holding period for such invest-
ment and the qualified emerging technologies investment that is
purchased shall be determined without regard to Internal Revenue Code §
1223.

(m) Amounts deferred. The amount deferred under paragraph (1) of this
subdivision shall be added to entire net income when the reinvestment in
the New York qualified emerging technology company which qualified a
taxpayer for such deferral is sold.

(n) Qualified gas transportation contracts.

(1) Any tax paid under this article allocable to receipts attributable
to a "qualified gas transportation contract" shall be deemed to have
been paid under article nine of this chapter for all purposes of law for
taxable years commencing on or after January first, two thousand,
computed as hereinafter provided, if all of the following conditions are met:

(i) For periods ending prior to January first, two thousand, the taxpayer paid the franchise tax due under section one hundred eighty-four of this chapter.

(ii) For the taxable year, all of the receipts from the pipeline transportation of natural gas attributable to the taxpayer and included in the taxpayer’s entire net income (without regard to this paragraph) are solely from the transportation of natural gas for wholesale customers and commercial retail customers.

(iii) The taxpayer’s franchise tax liability under this article for the taxable year (computed without regard to this paragraph) is determined under paragraph (a) of subdivision one of section two hundred ten of this article, and such tax liability (without regard to this paragraph) is greater than the liability the taxpayer would have incurred under sections one hundred eighty-three and one hundred eighty-four of this chapter (as such sections existed on December thirty-first, nineteen hundred ninety-nine) based on the same taxable period.

(iv) The taxpayer is a party to a “qualified gas transportation contract,” as defined herein.

(2) The provisions of this paragraph shall apply only for the taxable years during which such qualified gas transportation contract is in full force and effect, and shall apply only to the receipts of the taxpayer less any expenses of the taxpayer (but not less than zero), during the taxable year, to the extent included in entire net income, which are attributable to any such qualified gas transportation contracts. Provided, further, in any event, the characterization hereunder shall expire and be of no further force and effect for taxable years commencing on or after January first, two thousand fifteen.

(3) The term “qualified gas transportation contract” shall mean a service agreement for the transportation of natural gas for an end-user which is a qualified cogeneration facility with a rated capacity of one thousand megawatts or more, which (i) was entered into before January first, two thousand, and was in full force and effect and binding on the parties thereto as of such date, (ii) as originally executed, was for a term of at least twenty years, and (iii) the terms of which prohibit the pass-through to such customer of the franchise tax imposed under this article, while allowing the recovery of the gross earnings tax imposed under section one hundred eighty-four of this chapter. A contract shall not qualify as a qualified gas transportation contract if there is: (i) any renewal or extension of an otherwise qualified gas transportation contract occurring on or after January first, two thousand, or (ii) any material amendment to, or supplementation of, an otherwise qualified gas transportation contract on or after such date. Such renewal, extension, or material amendment or supplementation shall have the same force and effect of terminating the characterization hereunder as if the qualifying contract had expired by its own terms.

(o) (n-1) For taxable years beginning after December thirty-first, two thousand two, in the case of qualified property described in paragraph two of subsection k of section 168 of the internal revenue code, other than qualified resurgence zone property described in paragraph (q) of this subdivision, and other than qualified New York Liberty Zone property described in paragraph two of subsection b of section 1400L of the internal revenue code (without regard to clause (i) of subparagraph (C) of such paragraph), which was placed in service on or after June first, two thousand three, a taxpayer shall be allowed with respect to such property the depreciation deduction allowable under section 167 of the internal revenue code as such section would have applied to such property had it been acquired by the taxpayer on September tenth, two thousand one.

(o) Related members expense add back. (1) Definitions. (A) Related
member. "Related member" means a related person as defined in subpara-
graph (c) of paragraph three of subsection (b) of section four hundred
sixty-five of the internal revenue code, except that "fifty percent"
shall be substituted for "ten percent".

(B) Effective rate of tax. "Effective rate of tax" means, as to any
state or U.S. possession, the maximum statutory rate of tax imposed by
the state or possession on or measured by a related member's net income
multiplied by the apportionment percentage, if any, applicable to the
related member under the laws of said jurisdiction. For purposes of this
definition, the effective rate of tax as to any state or U.S. possession
is zero where the related member's net income tax liability in said
jurisdiction is reported on a combined or consolidated return including
both the taxpayer and the related member where the reported transactions
between the taxpayer and the related member are eliminated or offset.
Also, for purposes of this definition, when computing the effective rate
of tax for a jurisdiction in which a related member's net income is
eliminated or offset by a credit or similar adjustment that is dependent
upon the related member either maintaining or managing intangible prop-
erty or collecting interest income in that jurisdiction, the maximum
statutory rate of tax imposed by said jurisdiction shall be decreased to
reflect the statutory rate of tax that applies to the related member as
effectively reduced by such credit or similar adjustment.

(C) Royalty payments. Royalty payments are payments directly connected
to the acquisition, use, maintenance or management, ownership, sale,
exchange, or any other disposition of licenses, trademarks, copyrights,
trade names, trade dress, service marks, mask works, trade secrets,
patents and any other similar types of intangible assets as determined
by the commissioner, and include amounts allowable as interest
deductions under section one hundred sixty-three of the internal revenue
code to the extent such amounts are directly or indirectly for, related
to or in connection with the acquisition, use, maintenance or manage-
ment, ownership, sale, exchange or disposition of such intangible
assets.

(D) Valid Business Purpose. A valid business purpose is one or more
business purposes, other than the avoidance or reduction of taxation,
which alone or in combination constitute the primary motivation for some
business activity or transaction, which activity or transaction changes
in a meaningful way, apart from tax effects, the economic position of
the taxpayer. The economic position of the taxpayer includes an increase

in the market share of the taxpayer, or the entry by the taxpayer into
new business markets.

(2) Royalty expense add backs. (A) Except where a taxpayer is included
in a combined report with a related member pursuant to [subdivision four
ef] section two hundred [eleven] ten-C of this article, for the purpose
of computing entire net income or other applicable taxable basis, a
taxpayer must add back royalty payments directly or indirectly paid,
accrued, or incurred in connection with one or more direct or indirect
transactions with one or more related members during the taxable year to
the extent deductible in calculating federal taxable income.

(B) Exceptions. (i) The adjustment required in this paragraph shall
not apply to the portion of the royalty payment that the taxpayer estab-
lishes, by clear and convincing evidence of the type and in the form
specified by the commissioner, meets all of the following requirements:
(I) the related member was subject to tax in this state or another state
or possession of the United States or a foreign nation or some combina-
tion thereof on a tax base that included the royalty payment paid,
accrued or incurred by the taxpayer; (II) the related member during the
same taxable year directly or indirectly paid, accrued or incurred such
portion to a person that is not a related member; and (III) the trans-
action giving rise to the royalty payment between the taxpayer and the
related member was undertaken for a valid business purpose.
(ii) The adjustment required in this paragraph shall not apply if the taxpayer establishes, by clear and convincing evidence of the type and in the form specified by the commissioner, that: (I) the related member was subject to tax on or measured by its net income in this state or another state or possession of the United States or some combination thereof; (II) the tax base for said tax included the royalty payment paid, accrued or incurred by the taxpayer; and (III) the aggregate effective rate of tax applied to the related member in those jurisdictions is no less than eighty percent of the statutory rate of tax that applied to the taxpayer under section two hundred ten of this article for the taxable year.

(iii) The adjustment required in this paragraph shall not apply if the taxpayer establishes, by clear and convincing evidence of the type and in the form specified by the commissioner, that: (I) the royalty payment was paid, accrued or incurred to a related member organized under the laws of a country other than the United States; (II) the related member's income from the transaction was subject to a comprehensive income tax treaty between such country and the United States; (III) the related member was subject to tax in a foreign nation on a tax base that included the royalty payment paid, accrued or incurred by the taxpayer; (IV) the related member's income from the transaction was taxed in such country at an effective rate of tax at least equal to that imposed by this state; and (V) the royalty payment was paid, accrued or incurred pursuant to a transaction that was undertaken for a valid business purpose and using terms that reflect an arm's length relationship.

(iv) The adjustment required in this paragraph shall not apply if the taxpayer and the commissioner agree in writing to the application or use of alternative adjustments or computations. The commissioner may, in his or her discretion, agree to the application or use of alternative adjustments or computations when he or she concludes that in the absence of such agreement the income of the taxpayer would not be properly reflected.

(p) For taxable years beginning after December thirty-first, two thousand two, upon the disposition of property to which paragraph [(o)](n-1) of this subdivision applies, the amount of any gain or loss includible in entire net income shall be adjusted to reflect the inclusions and exclusions from entire net income pursuant to subparagraph seventeen of paragraph (a) and subparagraph seventeen of paragraph (b) of this subdivision attributable to such property.

(q) For purposes of paragraphs [(o)](n-1) and (p) of this subdivision, qualified resurgence zone property shall mean qualified property described in paragraph two of subsection k of section 168 of the internal revenue code substantially all of the use of which is in the resurgence zone, as defined below, and is in the active conduct of a trade or business by the taxpayer in such zone, and the original use of which in the resurgence zone commences with the taxpayer after December thirty-first, two thousand two. The resurgence zone shall mean the area of New York county bounded on the south by a line running from the intersection of the Hudson River with the Holland Tunnel, and running thence east to Canal Street, then running along the centerline of Canal Street to the intersection of the Bowery and Canal Street, running thence in a south-easterly direction diagonally across Manhattan Bridge Plaza, to the Manhattan Bridge and thence along the centerline of the Manhattan Bridge to the point where the centerline of the Manhattan Bridge would intersect with the easterly bank of the East River, and bounded on the north by a line running from the intersection of the Hudson River with the Holland Tunnel and running thence north along West Avenue to the intersection of Clarkson Street then running east along the centerline of Clarkson Street to the intersection of Washington Avenue, then running south along the centerline of Washington Avenue to the intersection of West Houston Street, then east along the centerline of West Houston
28 Street, then at the intersection of the Avenue of the Americas continuing east along the centerline of East Houston Street to the easterly bank of the East River.

\( (r) \) Subtraction modification for qualified residential loan portfolios. (1)(A) A taxpayer that is either a thrift institution as defined in subparagraph three of this paragraph or a qualified community bank as defined in subparagraph two of paragraph (s) of this subdivision and maintains a qualified residential loan portfolio as defined in subparagraph two of this paragraph shall be allowed as a deduction in computing entire net income the amount, if any, by which (i) thirty-two percent of its entire net income determined without regard to this paragraph exceeds (ii) the amounts deducted by the taxpayer pursuant to sections 166 and 585 of the Internal Revenue Code less any amounts included in federal taxable income as a result of a recovery of a loan.

\( (B)(i) \) If the taxpayer is in a combined report under section two hundred ten-C of this article, this deduction will be computed on a combined basis. In that instance, the entire net income of the combined reporting group for purposes of this paragraph shall be multiplied by a fraction, the numerator of which is the average total assets of all the thrift institutions and qualified community banks included in the combined report and the denominator of which is the average total assets of all the corporations included in the combined report.

\( (ii) \) Measurement of assets. (I) Total assets are those assets that are properly reflected on a balance sheet, computed in the same manner as is required by the banking regulator of the taxpayers included in the combined return.

\( (II) \) Assets will only be included if the income or expenses of which are properly reflected (or would have been properly reflected if not fully depreciated or expensed, or depreciated or expensed to a nominal value) in the computation of the combined group's entire net income for the taxable year. Assets will not include deferred tax assets and intangible assets identified as "goodwill".

\( (III) \) Tangible real and personal property, such as buildings, land, machinery, and equipment shall be valued at cost. Leased assets will be valued at the annual lease payment multiplied by eight. Intangible property, such as loans and investments, shall be valued at book value exclusive of reserves.

\( (IV) \) Intercorporate stockholdings and bills, notes and accounts receivable, and other intercorporate indebtedness between the corporations included in the combined report shall be eliminated.

\( (V) \) Average assets are computed using the assets measured on the first day of the taxable year, and on the last day of each subsequent quarter of the taxable year or month or day during the taxable year.

\( (2) \) Qualified residential loan portfolio. (A) A taxpayer maintains a qualified residential loan portfolio if at least sixty percent of the amount of the total assets at the close of the taxable year of the thrift institution or qualified community bank consists of the assets described in items (i) through (xii) of this clause, with the application of the rule in item (xiii). If the taxpayer is a member of a combined group, the determination of whether there is a qualified residential loan portfolio will be made by aggregating the assets of the thrift institutions and qualified community banks that are members of the combined group.

Assets:

\( (i) \) cash, which includes cash and cash equivalents including cash items in the process of collection, deposit with other financial institutions, including corporate credit unions, balances with federal reserve banks and federal home loan banks, federal funds sold, and cash and cash equivalents on hand. Cash shall not include any balances serving as collateral for securities lending transactions;

\( (ii) \) obligations of the United States or of a state or political...
subdivision thereof, and stock or obligations of a corporation which is
an instrumentality or a government sponsored enterprise of the United
States or of a state or political subdivision thereof;

(iii) loans secured by a deposit or share of a member;

(iv) loans secured by an interest in real property which is (or from
the proceeds of the loan, will become) residential real property or real
property used primarily for church purposes, loans made for the improve-
ment of residential real property or real property used primarily for
church purposes, provided that for purposes of this item, residential
real property shall include single or multi-family dwellings, facilities
in residential developments dedicated to public use or property used on
a nonprofit basis for residents, and mobile homes not used on a tran-
sient basis;

(v) property acquired through the liquidation of defaulted loans
described in item (iv) of this clause;

(vi) any regular or residual interest in a REMIC, as such term is
defined in section 860D of the internal revenue code, but only in the
proportion which the assets of such REMIC consist of property described
in any of the preceding items of this clause, except that if ninety-five
percent or more of the assets of such REMIC are assets described in
items (i) through (v) of this clause, the entire interest in the REMIC
shall qualify;

(vii) any mortgage-backed security which represents ownership of a
fractional undivided interest in a trust, the assets of which consist
primarily of mortgage loans, provided that the real property which
serves as security for the loans is (or from the proceeds of the loan,
will become) the type of property described in item (iv) of this clause
and any collateralized mortgage obligation, the security for which
consists primarily of mortgage loans that maintain as security the type
of property described in item (iv) of this clause;

(viii) certificates of deposit in, or obligations of, a corporation
organized under a state law which specifically authorizes such corpo-
ration to insure the deposits or share accounts of member associations;

(ix) loans secured by an interest in educational, health, or welfare
institutions or facilities, including structures designed or used prima-
arily for residential purposes for students, residents, and persons under
care, employees, or members of the staff of such institutions or facili-
ties;

(x) loans made for the payment of expenses of college or university
education or vocational training;

(xi) property used by the taxpayer in support of business which
consists principally of acquiring the savings of the public and invest-
ing in loans; and

(xii) loans for which the taxpayer is the creditor and which are whol-
ly secured by loans described in item (iv) of this clause.

(xiii) The value of accrued interest receivable and any loss-sharing
commitment or other loan guaranty by a governmental agency will be
considered part of the basis in the loans to which the accrued interest
or loss protection applies.

(B) At the election of the taxpayer, the percentage specified in
clause (A) of this subparagraph shall be applied on the basis of the
average assets outstanding during the taxable year, in lieu of the close
of the taxable year. The taxpayer can elect to compute an average using
the assets measured on the first day of the taxable year and on the last
day of each subsequent quarter, or month or day during the taxable year.
This election may be made annually.

(C) For purposes of item (iv) of clause (A) of this subparagraph, if a
multifamily structure securing a loan is used in part for nonresidential
use purposes, the entire loan is deemed a residential real property loan
if the planned residential use exceeds eighty percent of the property's
planned use (measured, at the taxpayer's election, by using square
footage or gross rental revenue, and determined as of the time the loan is made).

(D) For purposes of item (iv) of clause (A) of this subparagraph, loans made to finance the acquisition or development of land shall be deemed to be loans secured by an interest in residential real property if there is a reasonable assurance that the property will become residential real property within a period of three years from the date of acquisition of such land; but this sentence shall not apply for any taxable year unless, within such three year period, such land becomes residential real property. For purposes of determining whether any interest in a REMIC qualifies under item (vi) of clause (A) of this subparagraph, any regular interest in another REMIC held by such REMIC shall be treated as a loan described in a preceding item under principles similar to the principle of such item (vi), except that is such REMICs are part of a tiered structure, they shall be treated as one REMIC for purposes of such item (vi).

(3) For purposes of this paragraph, a "thrift institution" is a savings bank, a savings and loan association, or other savings institution chartered and supervised as such under federal or state law.

(1) A taxpayer that is a qualified community bank as defined in subparagraph two of this paragraph or a small thrift institution as defined in subparagraph two-a of this paragraph shall be allowed a deduction in computing entire net income equal to the amount computed under subparagraph three of this paragraph.

(2) To be a qualified community bank, a taxpayer must satisfy the following conditions.

(A) It is a bank or trust company organized under or subject to the provisions of article three of the banking law or a comparable provision of the laws of another state, or a national banking association.

(B) The average value during the taxable year of the assets of the taxpayer, or the assets of the combined reporting group of the taxpayer under section two hundred ten-C of this article, must not exceed eight billion dollars.

(2-a) To be a small thrift institution, a taxpayer must satisfy the following conditions.

(A) It is a savings bank, a savings and loan association, or other savings institution chartered and supervised as such under federal or state law.

(B) The average value during the taxable year of the assets of the taxpayer, or the assets of the combined reporting group of the taxpayer under section two hundred ten-C of this article, must not exceed eight billion dollars.

(3)(A) The subtraction modification shall be computed as follows:

(i) Multiply the taxpayer's net interest income from loans during the taxable year by a fraction, the numerator of which is the gross interest income during the taxable year from qualifying loans and the denominator of which is the gross interest income during the taxable year from all loans.

(ii) Multiply the amount determined in clause (i) by fifty percent. This product is the amount of the deduction allowed under this paragraph.

(B)(i) Net interest income from loans shall mean gross interest income from loans less gross interest expense from loans. Gross interest expense from loans is determined by multiplying gross interest expense by a fraction, the numerator of which is the average total value of loans owned by the thrift institution or community bank during the taxable year and the denominator of which is the average total assets of the thrift institution or community bank during the taxable year.

(ii) Measurement of assets. (I) Total assets are those assets that are properly reflected on a balance sheet, computed in the same manner as is
required by the banking regulator of the taxpayers included in the
combined return.

II. Assets will only be included if the income or expenses of which
are properly reflected (or would have been properly reflected if not
fully depreciated or expensed, or depreciated or expensed to a nominal
amount) in the computation of the taxpayer's entire net income for the
taxable year. Assets will not include deferred tax assets and intangible
assets identified as "goodwill".

III. Tangible real and personal property, such as buildings, land,
machinery, and equipment shall be valued at cost. Leased assets will be
valued at the annual lease payment multiplied by eight. Intangible
property, such as loans and investments, shall be valued at book value
exclusive of reserves.

IV. Average assets are computed using the assets measured on the
first day of the taxable year, and on the last day of each subsequent
quarter of the taxable year or month or day during the taxable year.

C. A qualifying loan is a loan that meets the conditions specified in
subclause (i) of this clause and subclause (ii) of this clause.

(i) The loan is originated by the qualified community bank or small
thrift institution or purchased by the qualified community bank or small
thrift institution immediately after its origination in connection with a
commitment to purchase made by the bank or thrift institution prior to
the loan's origination.

(ii) The loan is a small business loan or a residential mortgage loan,
the principal amount of which loan is five million dollars or less, and
either the borrower is located in this state as determined under section
two hundred ten-A of this article and the loan is not secured by real
property, or the loan is secured by real property located in New York.

(iii) A loan that meets the definition of a qualifying loan in a prior
taxable year (including years prior to the effective date of this para-
graph) remains a qualifying loan in taxable years during and after which
such loan is acquired by another corporation in the taxpayer's combined
reporting group under section two hundred ten-C of this article.

(t) A small thrift institution or a qualified community bank, as
defined in paragraph (s) of this subdivision, that maintained a captive
REIT on April first, two thousand fourteen shall utilize a REIT
subtraction equal to one hundred sixty percent of the dividends paid
deductions allowed to that captive REIT for the taxable year for federal
income tax purposes and shall not be allowed to utilize the subtraction
modification for qualified residential loan portfolios under paragraph
(r) of this subdivision or the subtraction modification for community
banks and small thrifts under paragraph (s) of this subdivision in any
tax year in which such thrift institution or community bank maintains
that captive REIT.

10. The term "calendar year" means a period of twelve calendar months
(or any shorter period beginning on the date the taxpayer becomes
subject to the tax imposed by this article) ending on the thirty-first
day of December, provided the taxpayer keeps its books on the basis of
such period or on the basis of any period ending on any day other than
the last day of a calendar month, or provided the taxpayer does not keep
books, and includes, in case the taxpayer changes the period on the
basis of which it keeps its books from a fiscal year to a calendar year,
the period from the close of its last old fiscal year up to and includ-
ing the following December thirty-first. The term "fiscal year" means a
period of twelve calendar months (or any shorter period beginning on the
date the taxpayer becomes subject to the tax imposed by this article)
ending on the last day of any month other than December, provided the
taxpayer keeps its books on the basis of such period, and includes, in
case the taxpayer changes the period on the basis of which it keeps its
books from a calendar year to a fiscal year or from one fiscal year to
another fiscal year, the period from the close of its last old calendar
or fiscal year up to the date designated as the close of its new fiscal year.

11. The term "tangible personal property" means corporeal personal property, such as machinery, tools, implements, goods, wares and merchandise, and does not mean money, deposits in banks, shares of stock, bonds, notes, credits or evidences of an interest in property and evidences of debt.

12. The term elected or appointed officer shall include the chairman, president, vice-president, secretary, assistant secretary, treasurer, assistant treasurer, comptroller, and also any other officer, irrespective of his title, who is charged with and performs any of the regular functions of any such officer, unless the total compensation of such officer is derived exclusively from the receipt of commissions. A director shall be considered an elected or appointed officer only if he performs duties ordinarily performed by an officer.

19. The term "fulfillment services" shall mean any of the following services performed by an entity on its premises on behalf of a purchaser:
   (a) the acceptance of orders electronically or by mail, telephone, telefax or internet;
   (b) responses to consumer correspondence or inquiries electronically or by mail, telephone, telefax or internet;
   (c) billing and collection activities; or
   (d) the shipment of orders from an inventory of products offered for sale by the purchaser.

§ 5. Subdivisions 1, 2, 2-a, 4, 5, 6, 7 and 8 of section 209 of the tax law, subdivisions 1 and 6 as amended by chapter 817 of the laws of 1987, subdivision 2 as amended by chapter 75 of the laws of 1998, subdivision 2-a as added by chapter 340 of the laws of 1998, subdivision 4 as amended by section 27 of part S of this act, subdivisions 5 and 7 as amended by section 2 of part FF-1 of chapter 57 of the laws of 2008, and subdivision 8 as added by section 1 of part O of chapter 61 of the laws of 2006, are amended to read as follows:

1. (a) For the privilege of exercising its corporate franchise, or of doing business, or of employing capital, or of owning or leasing property in this state in a corporate or organized capacity, or of maintaining an office in this state, or of deriving receipts from activity in this state, for all or any part of each of its fiscal or calendar years, every domestic or foreign corporation, except corporations specified in subdivision four of this section, shall annually pay a franchise tax, upon the basis of its [entire net] business income base, or upon such other basis as may be applicable as hereinafter provided, for such fiscal or calendar year or part thereof, on a report which shall be filed, except as hereinafter provided, on or before the fifteenth day of March next succeeding the close of each such year, or, in the case of a corporation which reports on the basis of a fiscal year, within two and one-half months after the close of such fiscal year, and shall be paid as hereinafter provided.

   (b) A corporation is deriving receipts from activity in this state if it has receipts within this state of one million dollars or more in the taxable year. For purposes of this section, the term "receipts" means the receipts that are subject to the apportionment rules set forth in section two hundred ten-A of this article, and the term "receipts within this state" means the receipts included in the numerator of the apportionment factor determined under section two hundred ten-A of this article. For purposes of this paragraph, receipts from processing credit card transactions for merchants include merchant discount fees received by the corporation.

   (c) A corporation is doing business in this state if (i) it has issued credit cards to one thousand or more customers who have a mailing address within this state as of the last day of its taxable year, (ii)
it has merchant customer contracts with merchants and the total number
of locations covered by those contracts equals one thousand or more.

(d)(i) A corporation with less than one million dollars but at least
ten thousand dollars of receipts within this state in a taxable year
that is part of a combined reporting group under section two hundred
ten-C of this article is deriving receipts from activity in this state
if the receipts within this state of the members of the combined report-
ing group that have at least ten thousand dollars of receipts within
this state in the aggregate meet the threshold set forth in paragraph
(b) of this subdivision.

(ii) A corporation that does not meet any of the thresholds set forth
in paragraph (c) of this subdivision but has at least ten customers, or
locations, or customers and locations, as described in paragraph (c) of
this subdivision, and is part of a combined reporting group under
section two hundred ten-C of this article that is doing business in this
state if the number of customers, locations, or customers and locations,
within this state of the members of the combined reporting group that
have at least ten customers, locations, or customers and locations,
within this state in the aggregate meets any of the thresholds set forth
in paragraph (c) of this subdivision.

(e) At the end of each year, the commissioner shall review the cumula-
tive percentage change in the consumer price index. The commissioner
shall adjust the receipt thresholds set forth in this subdivision if the
consumer price index has changed by ten percent or more since January
first, two thousand fifteen, or since the date that the thresholds were
last adjusted under this subdivision. The thresholds shall be adjusted
to reflect that cumulative percentage change in the consumer price
index. The adjusted thresholds shall be rounded to the nearest one thou-
sand dollars. As used in this paragraph, "consumer price index" means
the consumer price index for all urban consumers (CPI-U) available form
the bureau of labor statistics of the United States department of labor.
Any adjustment shall apply to tax periods that begin after the adjust-
ment is made.

(f) If a partnership is doing business, employing capital, owning or
leasing property in this state, maintaining an office in the state, or
deriving receipts from activity in this state, any corporation that is a
partner in such partnership shall be subject to tax under this article
as described in the regulations of the commissioner.

2. A foreign corporation shall not be deemed to be doing business,
employing capital, owning or leasing property, or maintaining an office
in this state, or deriving receipts from activity in this state, for the
purposes of this article, by reason of (a) the maintenance of cash
balances with banks or trust companies in this state, or (b) the owner-
ship of shares of stock or securities kept in this state, if kept in a
safe deposit box, safe, vault or other receptacle rented for the
purpose, or if pledged as collateral security, or if deposited with one
or more banks or trust companies, or brokers who are members of a recog-
nized security exchange, in safekeeping or custody accounts, or (c) the
taking of any action by any such bank or trust company or broker, which
is incidental to the rendering of safekeeping or custodian service to
such corporation, or (d) the maintenance of an office in this state by
ees of the corporation if the corporation otherwise is not doing business in this state, and does not employ capital or own or lease property in this state, or (e) the keeping of books or records of a corporation in this state if such books or records are not kept by employees of such corporation and such corporation does not otherwise do business, employ capital, own or lease property or maintain an office in this state, or (f) the use of fulfillment services of a person other than an affiliated person and the ownership of property stored on the premises of such person in conjunction with such services, or (g) any combination of the foregoing activities. [For purposes of this subdivision, persons are affiliated persons with respect to each other where one of such persons has an ownership interest of more than five percent, whether direct or indirect, in the other, or where an ownership interest of more than five percent, whether direct or indirect, is held in each of such persons by another person or by a group of other persons which are affiliated persons with respect to each other. The term "person" in the preceding sentence and in paragraph (f) of this subdivision shall have the meaning ascribed thereto by subdivision (a) of section eleven hundred one of this chapter.]

2-a. An alien corporation shall not be deemed to be doing business, employing capital, owning or leasing property, or maintaining an office in this state, for the purposes of this article, if its activities in this state are limited solely to (a) investing or trading in stocks and securities for its own account within the meaning of clause (ii) of subparagraph (A) of paragraph (2) of subsection (b) of section eight hundred sixty-four of the internal revenue code or (b) investing or trading in commodities for its own account within the meaning of clause (ii) of subparagraph (B) of paragraph (2) of section eight hundred sixty-four of the internal revenue code or (c) any combination of activities described in paragraphs (a) and (b) of this subdivision. An alien corporation that under any provision of the internal revenue code is not treated as a "domestic corporation" as defined in section seven thousand seven hundred one of such code and has no effectively connected income for the taxable year pursuant to clause (iv) of the opening paragraph of subdivision nine of section two hundred eight of this article shall not be subject to tax under this article for that taxable year. For purposes of this [subdivision] article, an alien corporation is a corporation organized under the laws of a country, or any political subdivision thereof, other than the United States, or organized under the laws of a possession, territory or commonwealth of the United States.

4. Corporations liable to tax under sections one hundred eighty-three to one hundred eighty-four-a, inclusive, corporations taxable under [articles thirty-two and] article thirty-three of this chapter, any trust company organized under a law of this state all of the stock of which is owned by not less than twenty savings banks organized under a law of this state, [bank holding companies filing a combined return in accordance with subsection (f) of section fourteen hundred sixty-two of this chapter.] a captive REIT or a captive RIC filing a combined return under [either subsection (f) of section fourteen hundred sixty-two or] subdivision (f) of section fifteen hundred fifteen of this chapter, and housing companies organized and operating pursuant to the provisions of article two or article five of the private housing finance law and housing development fund companies organized pursuant to the provisions of S. 6359--D A. 8559--D

1 article eleven of the private housing finance law shall not be subject to tax under this article.

5. For any taxable year of a real estate investment trust as defined in section eight hundred fifty-six of the internal revenue code in which such trust is subject to federal income taxation under section eight hundred fifty-seven of such code, such trust shall be subject to a tax computed under either paragraph (a) [r-(c)] or (d) of subdivision one of
section two hundred ten of this chapter, whichever is [greatest] greater, and shall not be subject to any tax under article [thirty-two or article] thirty-three of this chapter except for a captive REIT required to file a combined return under [subdivision (f) of section fourteen hundred sixty-two or] subdivision (f) of section fifteen hundred fifteen of this chapter. In the case of such a real estate investment trust, including a captive REIT as defined in section two of this chapter, the term "entire net income" means "real estate investment trust taxable income" as defined in paragraph two of subdivision (b) of section eight hundred fifty-seven (as modified by section eight hundred fifty-eight) of the internal revenue code plus the amount taxable under paragraph three of subdivision (b) of section eight hundred fifty-seven of such code, subject to the [modification] modifications required by subdivision nine of section two hundred eight of this article [(other than the modification required by subparagraph two of paragraph (a) thereof), including the modifications required by paragraphs (d) and (e) of subdivision three of section two hundred ten of this article].

6. For any taxable year of a DISC, not exempt from tax under paragraph (i) of subdivision nine of section two hundred eight of this article, the taxes imposed by subdivision one of this section shall be computed only under either paragraph (b) or (d) of subdivision one of section two hundred ten of this chapter, whichever is greater[, and paragraph (a) of such subdivision].

7. For any taxable year, beginning on or after January first, nineteen hundred eighty of a regulated investment company, as defined in section eight hundred fifty-one of the internal revenue code, in which such company is subject to federal income taxation under section eight hundred fifty-two of such code, such company shall be subject to a tax computed under either paragraph (a) or (d) of subdivision one of section two hundred ten of this chapter, whichever is [greatest] greater, and shall not be subject to any tax under article [thirty-two or article] thirty-three of this chapter except for a captive RIC required to file a combined return under [subdivision (f) of section fourteen hundred sixty-two or] subdivision (f) of section fifteen hundred fifteen of this chapter. In the case of such a regulated investment company, including a captive RIC as defined in section two of this chapter, the term "entire net income" means "investment company taxable income" as defined in paragraph two of subdivision (b) of section eight hundred fifty-two, as modified by section eight hundred fifty-five, of the internal revenue code plus the amount taxable under paragraph three of subdivision (b) of section eight hundred fifty-two of such code subject to the [modification] modifications required by subdivision nine of section two hundred eight of this chapter[, other than the modification required by subparagraph two of paragraph (a) and by paragraph (f) thereof, including the modification required by paragraphs (d) and (e) of subdivision three of section two hundred ten of this chapter].

8. For any taxable year beginning on or after January first, two thousand six, a corporation that is no longer doing business, employing capital, or owning or leasing property, or deriving receipts from activ-

ity in this state in a corporate or organized capacity that has filed a final tax return with the department for the last tax year it was doing business and has no outstanding tax liability for such final tax return or any tax return for prior tax years shall be exempt from all taxes imposed by paragraph (d) of subdivision one of section two hundred ten of this article for tax years following the last year such corporation was doing business. § 6. Section 209-A of the tax law is REPEALED.

§ 7. The section heading and subdivision 1 of section 209-B of the tax law, the section heading as amended by chapter 11 of the laws of 1983 and subdivision 1 as amended by section 4 of part A of chapter 59 of the laws of 2013, are amended to read as follows:
13  [Temporary—metropolitan] Metropolitan transportation business tax
14  surcharge. 1. (a) For the privilege of exercising its corporate fran-
15  chise, or of doing business, or of employing capital, or of owning or
16  leasing property in a corporate or organized capacity, or of maintaining
17  an office, or of deriving receipts from activity in the metropolitan
18  commuter transportation district, for all or any part of its taxable
19  year, there is hereby imposed on every corporation, other than a New
20  York S corporation, subject to tax under section two hundred nine of
21  this article, or any receiver, referee, trustee, assignee or other fidu-
22  ciary, or any officer or agent appointed by any court, who conducts the
23  business of any such corporation, [for the taxable years commencing on
24  or after January first, nineteen hundred eighty-two but ending before
25  December thirty-first, two thousand eighteen,] a tax surcharge, in addi-
26  tion to the tax imposed under section two hundred nine of this article,
27  to be computed at the rate of [eighteen percent of the tax imposed under
28  such section two hundred nine for such taxable years or any part of such
29  taxable years ending before December thirty-first, nineteen hundred
30  eighty-three after the deduction of any credits otherwise allowable
31  under this article. and at the rate of] seventeen percent of the tax
32  imposed under such section for such taxable years or any part of such
33  taxable years ending on or after December thirty-first, nineteen hundred
34  eighty-three and before January first, two thousand fifteen after the
35  deduction of any credits otherwise allowable under this article[; pro-
36  vided, however, that], at the rate of twenty-five and six-tenths
37  percent of the tax imposed under such section for taxable years begin-
38  ning on or after January first, two thousand fifteen and before January
39  first, two thousand sixteen before the deduction of any credits other-
40  wise allowable under this article, and at the rate determined by the
41  commissioner pursuant to paragraph (f) of this subdivision of the tax
42  imposed under such section, for taxable years beginning on or after
43  January first, two thousand sixteen before the deduction of any credits
44  otherwise allowable under this article. However, such [rates] rate of
45  tax surcharge shall be applied only to that portion of the tax imposed
46  under section two hundred nine of this article [after] before the
deduction of any credits otherwise allowable under this article which is
47  attributable to the taxpayer's business activity carried on within the
48  metropolitan commuter transportation district; and provided, further,
49  that the tax surcharge imposed by this section shall not be imposed
50  upon any taxpayer for more than four hundred thirty-two months. Provided
51  however, that for taxable years commencing on or after July first, nine-
52  teen hundred ninety-eight, such surcharge shall be calculated as if the
53  tax imposed under section two hundred ten of this article were imposed
54  under the law in effect for taxable years commencing on or after July
55  first, nineteen hundred ninety-seven and before July first, nineteen
56  S. 6359--D

1  hundred ninety-eight. Provided however, that for taxable years commen-
2  cing on or after January first, two thousand seven, such surcharge shall
3  be calculated using the highest of the tax bases imposed pursuant to
4  paragraphs (a), (b), (c) or (d) of subdivision one of section two
5  hundred ten of this article and the amount imposed under paragraph (e)
6  of subdivision one of such section two hundred ten, for the taxable
7  year; and, provided further that, if such highest amount is the tax base
8  imposed under paragraph (a), (b) or (c) of such subdivision, then the
9  surcharge shall be computed as if the tax rates and limitations under
10  such paragraph were the tax rates and limitations under such paragraph
11  in effect for taxable years commencing on or after July first, nineteen
12  hundred ninety-seven and before July first, nineteen hundred ninety-
13  eight] the surcharge computed on a combined report shall include a
14  surcharge on the fixed dollar minimum tax for each member of the
15  combined group subject to the surcharge under this subdivision.
16  (b) A corporation is deriving receipts from activity in the metropol-
17  itan commuter transportation district if it has receipts within the
metropolitan commuter transportation district of one million dollars or more in a taxable year. For purposes of this section, the term "receipts" means the receipts that are subject to the apportionment rules set forth in section two hundred ten-A of this article, and the term "receipts within the metropolitan commuter transportation district" means the receipts included in the numerator of the apportionment factor determined under subdivision two of this section. For purposes of this paragraph, receipts from processing credit card transactions for merchants include merchant discount fees received by the corporation.

(c) A corporation is doing business in the metropolitan commuter transportation district if (i) it has issued credit cards to one thousand or more customers who have a mailing address within the metropolitan commuter transportation district as of the last day of its taxable year, (ii) it has merchant customer contracts with merchants and the total number of locations covered by those contracts equals one thousand or more locations in the metropolitan commuter transportation district to whom the corporation remitted payments for credit card transactions during the taxable year, or (iii) the sum of the number of customers described in subparagraph (i) of this paragraph plus the number of locations covered by its contracts described in subparagraph (ii) of this paragraph equals one thousand or more. As used in this paragraph, the term "credit card" includes bank, credit, travel and entertainment cards.

(d)(i) A corporation with less than one million dollars but at least ten thousand dollars of receipts within the metropolitan commuter transportation district in a taxable year that is part of a combined reporting group under section two hundred ten-C of this article is deriving receipts from activity in the metropolitan commuter transportation district if the receipts within the metropolitan commuter transportation district of the members of the combined reporting group that have at least ten thousand dollars of receipts within the metropolitan commuter transportation district in the aggregate meet the threshold set forth in paragraph (b) of this subdivision.

(ii) A corporation that does not meet any of the thresholds set forth in paragraph (c) of this subdivision but has at least ten customers, or locations, or customers and locations, as described in paragraph (c), and is part of a combined reporting group under section two hundred ten-C of this article that is doing business in the metropolitan commuter transportation district if the number of customers, locations, or customers and locations, within the metropolitan commuter transportation district of the members of the combined reporting group that have at least ten thousand dollars of receipts within the metropolitan commuter transportation district in the aggregate meets any of the thresholds set forth in paragraph (c) of this subdivision.

(e) At the end of each year, the commissioner shall review the cumulative percentage change in the consumer price index. The commissioner shall adjust the receipt thresholds set forth in this subdivision if the consumer price index has changed by ten percent or more since the January first, two thousand fifteen or since the date that the thresholds were last adjusted under this subdivision. The thresholds shall be adjusted to reflect that cumulative percentage change in the consumer price index. The adjusted thresholds shall be rounded to the nearest one thousand dollars. As used in this paragraph, "consumer price index" means the consumer price index for all urban consumers (CPI-U) available from the bureau of labor statistics of the United States department of labor. Any adjustment shall apply to tax periods that begin after the adjustment is made.

(f) The commissioner shall determine the rate of tax for taxable years beginning on or after January first, two thousand sixteen by adjusting the rate for taxable years beginning on or after January first, two thousand fifteen and before January first, two thousand sixteen as
necessary to ensure that the receipts attributable to such surcharge, as
impacted by the chapter of the laws of two thousand fourteen which added
this paragraph, will meet and not exceed the financial projections for
state fiscal year two thousand sixteen-two thousand seventeen, as
reflected in state fiscal year two thousand fifteen-two thousand sixteen
enacted budget. The commissioner shall annually determine the rate ther-
after using the financial projections for the state fiscal year that
commences in the year for which the rate is to be set as reflected in
the enacted budget for the fiscal year commencing on the previous April
first.

§ 8. Subdivision 2 of section 209-B of the tax law, as amended by
chapter 11 of the laws of 1983, paragraph (a) as amended by chapter 760
of the laws of 1992 and subparagraph 2 of paragraph (b) as amended by
section 3 of part K of chapter 63 of the laws of 2000, is amended to
read as follows:

2. The portion of the taxpayer's business activity carried on within
the metropolitan commuter transportation district shall be determined by
multiplying the tax imposed under section two hundred nine of this arti-
cle before the deduction of any credits otherwise allowable under this
article by a percentage to be determined as follows:
(a) ascertaining the percentage which the average value of the taxpay-
er's real and tangible personal property, whether owned or rented to it,
within the metropolitan commuter transportation district during the
period covered by its report bears to the average value of all the
taxpayer's real and tangible personal property, whether owned or rented
to it, within the state during such period; provided that the term
"value of the taxpayer's real and tangible personal property" shall
mean the adjusted bases of such properties for federal income tax purposes
(except that in the case of rented property such value shall mean the
product of (i) eight and (ii) the gross rents payable for the rental of
such property during the taxable year); provided, however, that the
taxpayer may make a one-time, revocable election to use fair market
value as the value of all of its real and tangible personal property,
provided that such election is made on or before the due date for filing
a report under section two hundred eleven for the taxpayer's first taxa-
ble year commencing on or after January first, two thousand fifteen and
provided that such election shall not apply to any taxable year with
respect to which the taxpayer is included on a combined report unless
each of the taxpayers included on such report has made such an election
which remains in effect for such year;
(b) ascertaining the percentage [which the receipts of the taxpayer,
computed on the cash or accrual basis according to the method of
accounting used in the computation of its entire net income, arising
during such period from:
(1) sales of its tangible personal property where shipments are made
to points within the metropolitan commuter transportation district,
(2) services performed within the metropolitan commuter transportation
district, provided, however, that (i) in the case of a taxpayer engaged
in the business of publishing newspapers or periodicals, receipts arising
from sales of advertising contained in such newspapers and period-
icals shall be deemed to arise from services performed within the metropol-
itan commuter transportation district to the extent that such
newspapers and periodicals are delivered to points within the metropol-
itan commuter transportation district, (ii) receipts from an investment
company from the sale of management, administration or distribution
services to such investment company shall be deemed to arise from
services performed within the metropolitan commuter transportation
district to the extent set forth in subparagraph six of paragraph (a) of
subdivision three of section two hundred ten of this chapter (except
that references in such subparagraph six to the state shall be deemed, for purposes of application to this clause, to be references to the metropolitan commuter transportation district), (iii) in the case of taxpayers principally engaged in the activity of air freight forwarding acting as principal and like indirect air carriage receipts arising from such activity shall arise from services performed within the metropolitan commuter transportation district as follows: one hundred percent of such receipts if both the pickup and delivery associated with such receipts are made in the metropolitan commuter transportation district and fifty percent of such receipts if either the pickup or delivery associated with such receipts is made in the metropolitan commuter transportation district, and (iv) in the case of a taxpayer which is a registered securities or commodities broker or dealer, the receipts specified in subparagraph nine of paragraph (a) of subdivision three of section two hundred ten of this article shall be deemed to arise from services performed within the metropolitan commuter transportation district to the extent set forth in such subparagraph nine (except that references in such subparagraph nine to the state shall be deemed, for purposes of the application of this clause, to be references to the metropolitan commuter transportation district).

(3) rentals from property situated and royalties from the use of patents or copyrights within the metropolitan commuter transportation district, and receipts from the sales of rights for closed-circuit and cable television transmissions of an event (other than events occurring on a regularly scheduled basis) taking place within the metropolitan commuter transportation district as a result of the rendition of services by employees of the corporation, as athletes, entertainers or performing artists, but only to the extent that such receipts are attributable to such transmissions received or exhibited within the metropolitan commuter transportation district, and

(4) all other business receipts earned within the metropolitan commuter transportation district, bear to the total amount of the taxpayer's receipts, similarly computed, arising during such period from all sales of its tangible personal property, services, rentals, royalties, receipts from the sales of rights for closed-circuit and cable television transmissions and all other business transactions, within the state;] of the taxpayer's receipts within the metropolitan commuter transportation district pursuant to the method prescribed in section two hundred ten-A of this article, except that

(i) the numerator of the apportionment fraction under such section two hundred ten-A shall be the denominator of the apportionment fraction under this paragraph,

(ii) the numerator of the apportionment fraction under this paragraph shall be determined by applying the rules in such section two hundred ten-A relating to the numerator of the apportionment fraction as if those rules referenced the metropolitan commuter transportation district rather than this state,

(iii) to the extent that a provision in such section two hundred ten-A provides that eight percent of the receipts specified in that provision should be included in the numerator of the apportionment fraction, ninety percent of such eight percent amount shall be considered within the metropolitan commuter transportation district and one hundred percent of such eight percent amount shall be considered to be within the state, and

(iv) to the extent that a provision in such section two hundred ten-A of this article provides that the receipts specified in that provision shall not be included in the numerator of the apportionment fraction under such section two hundred ten-A, such receipts shall not be included in determining the portion of the taxpayer's business activity carried on within the metropolitan commuter transportation district;

(c) ascertaining the percentage of the total wages, salaries and other
personal service compensation, similarly computed, during such period, of employees within the metropolitan commuter transportation district, except general executive officers, to the total wages, salaries and other personal service compensation, similarly computed, during such period, of all the taxpayer's employees within the state, except general executive officers; and

(d) adding together the percentages so determined and dividing the result by the number of percentages.

§ 9. Intentionally omitted.

§ 10. Subdivisions 2-a and 2-b of section 209-B of the tax law are REPEALED.

§ 11. Subdivisions 3 and 5 of section 209-B of the tax law, subdivision 3 as amended by chapter 11 of the laws of 1983 and subdivision 5 as amended by chapter 166 of the laws of 1991, are amended to read as follows:

3. A corporation shall not be deemed to be doing business, employing capital, owning or leasing property, or maintaining an office, or deriving receipts from activity in the metropolitan commuter transportation district, for the purposes of this section, by reason of (a) the maintenance of cash balances with banks or trust companies in the metropolitan commuter transportation district, or (b) the ownership of shares of stock or securities kept in the metropolitan commuter transportation district, if kept in a safe deposit box, safe, vault or other receptacle rented for the purpose, or if pledged as collateral security, or if deposited with one or more banks or trust companies, or brokers who are members of a recognized security exchange, in safekeeping or custody accounts, or (c) the taking of any action by any such bank or trust company or broker, which is incidental to the rendering of safekeeping or custodian service to such corporation, or (d) the maintenance of an office in the metropolitan commuter transportation district by one or more officers or directors of the corporation who are not employees of the corporation if the corporation otherwise is not doing business in the metropolitan commuter transportation district, and does not employ capital or own or lease property in the metropolitan commuter transportation district, or (e) the keeping of books or records of a corporation in the metropolitan commuter transportation district if such books or records are not kept by employees of such corporation and such corporation does not otherwise do business, employ capital, own or lease property or maintain an office in the metropolitan commuter transportation district, or (f) any combination of the foregoing activities.

5. The provisions concerning reports under sections two hundred ten-C and two hundred eleven shall be applicable to this section, except that for purposes of an automatic extension for six months for filing a report covering the tax surcharge imposed by this section, such automatic extension shall be allowed only if a taxpayer files with the commissioner an application for extension in such form as said commissioner may prescribe by regulation and pays on or before the date of such filing in addition to any other amounts required under this article, either ninety percent of the entire tax surcharge required to be paid under this section for the applicable period, or not less than the tax surcharge shown on the taxpayer's return for the preceding taxable year, if such preceding taxable year was a taxable year of twelve months; provided, however, that in no event shall such amount be less than the product of the following three amounts: (1) the tax surcharge rate in effect for the taxable year pursuant to subdivision one of this section, (2) the fixed dollar minimum applicable to such taxpayer as determined under paragraph (d) of subdivision one of section two hundred ten of this chapter for the taxable year, and (3) the percentage determined under subdivision two of this section for the preceding taxable year, unless the taxpayer was not subject to the tax surcharge imposed pursuant to this section with respect to such year, in which case such
percentage shall be deemed to be one hundred percent. The tax surcharge imposed by this section shall be payable to the commissioner in full at the time the report is required to be filed, and such tax surcharge or the balance thereof, imposed on any taxpayer which ceases to exercise its franchise or be subject to the tax surcharge imposed by this section shall be payable to the commissioner at the time the report is required to be filed, provided such tax surcharge of a domestic corporation which continues to possess its franchise shall be subject to adjustment as the circumstances may require; all other tax surcharges of any such taxpayer, which pursuant to the foregoing provisions of this section would otherwise be payable subsequent to the time such report is required to be filed, shall nevertheless be payable at such time. All of the provisions of this article presently applicable are applicable to the tax surcharge imposed by this section.

§ 12. Subdivision 1 of section 210 of the tax law, as added by chapter 817 of the laws of 1987, the opening paragraph as amended by section 1 of part D and paragraph (g) as amended by section 2 of part A of chapter 63 of the laws of 2000, paragraph (a) as amended by section 2 of part N S. 6359--D A. 8559--D of chapter 60 of the laws of 2007, subparagraph 2 of paragraph (b) as amended by section 1 of part GG1, subparagraph 3 of paragraph (d) as amended by section 2 of part AA1, subparagraph 4 of paragraph (d) as added by section 2 of part AA1 and subparagraph 1 of paragraph (g) as amended by section 4 of part AA1 of chapter 57 of the laws of 2008, paragraph (c) as amended by section 10 of part A and subparagraph 1 of paragraph (d) as amended by section 12 of part A of chapter 56 of the laws of 1998, paragraph (d) as amended by chapter 760 of the laws of 1992, paragraph (e) as amended by section 1 of part P of chapter 407 of the laws of 1999, and paragraph (f) as amended by section 2 of part E of chapter 61 of the laws of 2005, is amended to read as follows:

1. The tax imposed by subdivision one of section two hundred nine of this chapter shall be: (A) in the case of each taxpayer other than a New York S corporation or a qualified homeowners association, the [sum of (1) the highest of the amounts prescribed in paragraphs (a), (b), (c), and (d) of this subdivision] and (2) the amount prescribed in paragraph (e) of this subdivision, (B) in the case of each New York S corporation, the amount prescribed in paragraph (g) of this subdivision, and (C) in the case of a qualified homeowners association, the [sum of (1) the highest of the amounts prescribed in paragraphs (a) and (b) of this subdivision] and (2) the amount prescribed in paragraph (e) of this subdivision. For purposes of this paragraph, the term "qualified homeowners association" means a homeowners association, as such term is defined in subsection (c) of section five hundred twenty-eight of the internal revenue code without regard to subparagraph (E) of paragraph one of such subsection (relating to elections to be taxed pursuant to such section), which has no homeowners association taxable income, as such term is defined in subsection (d) of such section. Provided, however, that in the case of a small business taxpayer (other than a New York S corporation) as defined in paragraph (f) of this subdivision, for taxable years beginning before January first, two thousand sixteen, if the amount prescribed in such paragraph (b) is higher...
than the amount prescribed in such paragraph (a) solely by reason of the
application of the rate applicable to small business taxpayers, then
with respect to such taxpayer the tax referred to in the previous
sentence shall be [the sum of (1) the highest] higher of the amounts
prescribed in paragraphs (a), (c) and (d) of this subdivision (and (2).
the amount prescribed in paragraph (e) of this subdivision).

(a) [Entire-net] Business income base. [For taxable years beginning
before July first, nineteen hundred ninety-nine, the amount prescribed
by this paragraph shall be computed at the rate of nine percent of the
taxpayer's entire net income base. For taxable years beginning after
June thirtieth, nineteen hundred ninety-nine and before July first, two
thousand, the amount prescribed by this paragraph shall be computed at
the rate of eight and one-half percent of the taxpayer's entire net
income base.] For taxable years beginning [on or after] before January first, two
thousand [seven] sixteen, the amount prescribed by this paragraph
shall be computed at the rate of seven and one-tenth percent of the
taxpayer's [entire-net] business income base. For taxable years begin-
ing on or after January first, two thousand sixteen, the amount
prescribed by this paragraph shall be six and one-half percent of the
taxpayer's business income base. The taxpayer's [entire-net] business
income base shall mean the portion of the taxpayer's [entire-net] busi-
ness income allocated within the state as hereinafter provided, subject
to any modification required by paragraphs (d) and (e) of subdivision
three of this section. However, in the case of a small business taxpay-
er, as defined in paragraph (f) of this subdivision, the amount
prescribed by this paragraph shall be computed pursuant to subparagraph
(iv) of this paragraph and in the case of a manufacturer, as defined in
subparagraph (vi) of this paragraph, the amount prescribed by this para-
graph shall be computed pursuant to subparagraph (vi) of this paragraph.

(i) if the entire net income base is not more than two hundred thou-
sand dollars, (1) for taxable years beginning before July first, nine-
teen hundred ninety-nine, the amount shall be eight percent of the
entire net income base; (2) for taxable years beginning after June thir-
tieth, nineteen hundred ninety-nine and before July first, two thousand
three, the amount shall be seven and one-half percent of the entire net
income base; and (3) for taxable years beginning after June thirtieth,
two thousand three and before January first, two thousand five, the
amount shall be 6.85 percent of the entire net income base;
(ii) if the entire net income base is more than two hundred thousand
dollars but not over two hundred ninety thousand dollars, (1) for taxa-
ble years beginning before July first, nineteen hundred ninety-nine, the
amount shall be the sum of (a) sixteen thousand dollars, (b) nine
percent of the excess of the entire net income base over two hundred
thousand dollars and (c) five percent of the excess of the entire net
income base over two hundred fifty thousand dollars; (2) for taxable
years beginning after June thirtieth, nineteen hundred ninety-nine and
before July first, two thousand, the amount shall be the sum of (a)
fifteen thousand dollars, (b) eight and one-half percent of the excess
of the entire net income base over two hundred thousand dollars and (c)
five percent of the excess of the entire net income base over two
hundred fifty thousand dollars; (3) for taxable years beginning after
June thirtieth, two thousand and before July first, two thousand one,
the amount shall be the sum of (a) fifteen thousand dollars, (b) eight
percent of the excess of the entire net income base over two hundred
of the entire net income base over two hundred thousand dollars and (e) two and one-half percent of the excess of the entire net income base over two hundred fifty thousand dollars; (4) for taxable years beginning after June thirtieth, two thousand one and before July first, two thousand three, the amount shall be seven and one-half percent of the entire net income base; and (5) for taxable years beginning after June thirtieth, two thousand three and before January first, two thousand five, the amount shall be the sum of (a) thirteen thousand seven hundred dollars, (b) 7.5 percent of the excess of the entire net income base over two hundred ninety thousand dollars but not over three hundred ninety thousand dollars; the amount prescribed by this paragraph for a taxpayer which is a qualified New York manufacturer,

(iii) for taxable years beginning on or after January first, two thousand fifteen, the amount shall be the sum of (1) eighteen thousand eight hundred fifty dollars, (2) seven and one-half percent of the entire net income base over two hundred ninety thousand dollars but not over three hundred ninety thousand dollars and (3) seven and one-quarter percent of the excess of the entire net income base over three hundred fifty thousand dollars but not over three hundred ninety thousand dollars;

(iv) for taxable years beginning [on or after] before January first, two thousand sixteen, if the [entire net] business income base is not more than two hundred ninety thousand dollars the amount shall be six and one-half percent of the entire net income base; if the entire net income base is more than two hundred ninety thousand dollars but not over three hundred ninety thousand dollars the amount shall be the sum of (1) eighteen thousand eight hundred fifty dollars, (2) seven and one-half percent of the entire net income base over two hundred ninety thousand dollars but not over three hundred ninety thousand dollars and (3) seven and one-quarter percent of the excess of the entire net income base over three hundred fifty thousand dollars but not over three hundred ninety thousand dollars;

(v) if the taxable period to which subparagraphs (i), (ii), (iii), and subparagraph (iv) of this paragraph [apply] applies is less than twelve months, the amount prescribed by this paragraph shall be computed as follows:

(A) Multiply the [entire net] business income base for such taxpayer by twelve;
(B) Divide the result obtained in (A) by the number of months in the taxable year;
(C) Compute an amount pursuant to subparagraphs (i) and (ii) subparagraph (iv) as if the result obtained in (B) were the taxpayer's [entire net] business income base;
(D) Multiply the result obtained in (C) by the number of months in the taxpayer's taxable year;
(E) Divide the result obtained in (D) by twelve.

(vi) for taxable years beginning on or after January [thirty-first] first, two thousand [seven] fourteen, the amount prescribed by this paragraph for a taxpayer which is a qualified New York manufacturer, shall be computed at the rate of [six and one-half (6.5)] zero percent of the taxpayer's [entire net] business income base. [For taxable years beginning on or after January first, two thousand twelve and before January first, two thousand fifteen, the amount prescribed by this paragraph for a taxpayer which is an eligible qualified New York manufacturer shall be computed at the rate of three and one-quarter (3.25) percent of the taxpayer's entire net income base.] The term "manufacturer" shall
mean a taxpayer which during the taxable year is principally engaged in
the production of goods by manufacturing, processing, assembling, refin-
ing, mining, extracting, farming, agriculture, horticulture, floriculture,
S. 6359--D

A. 8559--D

ture, viticulture or commercial fishing. However, the generation and
distribution of electricity, the distribution of natural gas, and the
production of steam associated with the generation of electricity shall
not be qualifying activities for a manufacturer under this subparagraph.
Moreover, the combined group shall be considered a "manufacturer" for
purposes of this subparagraph only if the combined group during the
taxable year is principally engaged in the activities set forth in this
paragraph, or any combination thereof. A taxpayer or a combined group
shall be "principally engaged" in activities described above if, during
the taxable year, more than fifty percent of the gross receipts of the
taxpayer or combined group, respectively, are derived from receipts from
the sale of goods produced by such activities. In computing a combined
group's gross receipts, intercorporate receipts shall be eliminated. A
"qualified New York manufacturer" is a manufacturer which has property
in New York which is described in [clause (h) of subparagraph (i) of
paragraph (b) of] subdivision [twelve of this section] one of section
two hundred ten-B of this article and either (I) the adjusted basis of
such property for federal income tax purposes at the close of the taxable
year is at least one million dollars or (II) all of its real and
personal property is located in New York. [In addition, a "qualified New
York manufacturer" means a taxpayer which is defined as a qualified
emerging technology company under paragraph (c) of subdivision one of
section thirty-one hundred two-e of the public authorities law regard-
less of the ten million dollar limitation expressed in subparagraph one
of such paragraph (c). The commissioner shall establish guidelines and
criteria that specify requirements by which a manufacturer may be clas-
sified as an eligible qualified New York manufacturer. Criteria may
include but not be limited to factors such as regional unemployment, the
economic impact that manufacturing has on the surrounding community,
population decline within the region and median income within the region
in which the manufacturer is located. In establishing these guidelines
and criteria, the commissioner shall endeavor that the total annual cost
of the lower rates shall not exceed twenty-five million dollars.] A
taxpayer or, in the case of a combined report, a combined group, that
does not satisfy the principally engaged test may be a qualified New
York manufacturer if the taxpayer or the combined group employs during
the taxable year at least two thousand five hundred employees in manu-
facturing in New York and the taxpayer or the combined group has proper-
ty in the state used in manufacturing, the adjusted basis of which for
federal income tax purposes at the close of the taxable year is at least
one hundred million dollars.

(vii) For a taxpayer that is defined as a qualified [New York manufac-
turer, as defined in subparagraph (vi) of this paragraph,] emerging
technology company under paragraph (c) of subdivision one of section
thirty-one hundred two-e of the public authorities law regardless of the
ten million dollar limitation expressed in subparagraph one of such
paragraph (c) the rate at which the tax is computed in effect for taxa-
ble years beginning on or after January first, two thousand thirteen and
before January first, two thousand fourteen for such qualified [New York
manufacturers] emerging technology companies shall be reduced by nine
and two-tenths percent for taxable years commencing on or after January
first, two thousand fourteen and before January first, two thousand
fifteen, twelve and three-tenths percent for taxable years commencing on
or after January first, two thousand fifteen and before January first, two
thousand sixteen, fifteen and four-tenths percent for taxable years
commencing on or after January first, two thousand sixteen and before
January first, two thousand eighteen, and twenty-five percent for taxable years beginning on or after January first, two thousand eighteen.

(viii) (A) In computing the business income base, taxpayers shall be allowed both a prior net operating loss conversion subtraction under this subparagraph and a net operating loss deduction under subparagraph (ix) of this paragraph. The prior net operating loss conversion subtraction computed under this subparagraph shall be applied against the business income base before the net operating loss deduction computed under subparagraph (ix) of this paragraph.

(B) Prior net operating loss conversion subtraction.

(1) Definitions.

(I) "Base year" means the last taxable year beginning on or after January first, two thousand fourteen and before January first, two thousand fifteen.

(II) "Unabsorbed net operating loss" means the unabsorbed portion of net operating loss as calculated under paragraph (f) of subdivision nine of section two hundred eight of this article or subsection (k-1) of section fourteen hundred fifty-three of this chapter as such sections were in effect on December thirty-first, two thousand fourteen, that was not deductible in previous taxable years and was eligible for carryover on the last day of the base year subject to the limitations for deduction under such sections, including any net operating loss sustained by the taxpayer during the base year.

(III) "Base year BAP" means the taxpayer's business allocation percentage as calculated under paragraph (a) of subdivision three of this section for the base year, or the taxpayer's allocation percentage as calculated under section fourteen hundred fifty-four of this chapter for purposes of calculating entire net income for the base year, as such sections were in effect on December thirty-first, two thousand fourteen.

(IV) "Base year tax rate" means the taxpayer's tax rate for the base year as calculated under this paragraph or subsection (a) of section fourteen hundred fifty-five of this chapter, as such provisions were in effect on December thirty-first, two thousand fourteen.

(2) The prior net operating loss conversion subtraction shall be calculated as follows:

(I) The taxpayer shall first calculate the tax value of its unabsorbed net operating loss for the base year. The value is equal to the product of (I) the amount of the taxpayer's unabsorbed net operating loss, (II) the taxpayer's base year BAP, and (III) the taxpayer's base year tax rate.

(II) The product determined under item (I) of this subclause is then divided by six and one-half percent, or in the case of a qualified New York manufacturer, five and seven-tenths percent. This result shall equal the taxpayer's prior net operating loss conversion subtraction pool.

(III) The taxpayer's prior net operating loss conversion subtraction for the taxable year shall equal one-tenth of its net operating loss conversion subtraction pool plus any amount of unused prior net operating loss conversion subtraction from preceding taxable years. Provided, however, the prior net operating loss conversion subtraction of a small business corporation, as defined in paragraph (f) of this subdivision, as of the last day of the base year, shall not be subject to the one-tenth limitation in the previous sentence.

(IV) In lieu of the subtraction described in item (III) of this subclause, if the taxpayer so elects, the taxpayer's prior net operating loss conversion subtraction for the tax years beginning on or after
sixteen by the due date for such return (determined with regard to extensions).

(3) Combined groups. (I) Where a taxpayer was properly included or required to be included in a combined report for the base year pursuant to section two hundred eleven of this article or a combined return under section fourteen hundred sixty-two of this chapter, as such sections were in effect on December thirty-first, two thousand fourteen, and the members of the combined group for the base year are the same as the members of the combined group for the taxable year immediately succeeding the base year, the combined group shall calculate its prior net operating loss conversion subtraction pool using the combined group's total unabsorbed net operating loss, base year BAP, and base year tax rate.

(II) If a combined group includes additional members in the taxable year immediately succeeding the base year that were not included in the combined group during the base year, each base year combined group and each taxpayer that filed separately in the base year but is included in the combined group in the taxable year succeeding the base year shall calculate its prior net operating loss conversion subtraction pool, and the sum of the pools shall be the combined prior net operating loss conversion subtraction pool of the combined group.

(III) If a taxpayer was properly included in a combined report for the base year and files a separate report in a subsequent taxable year, then the amount of remaining prior net operating loss conversion subtraction allowed to the taxpayer filing such separate report shall be proportionate to the amount that such taxpayer contributed to the prior net operating loss conversion subtraction pool on a combined basis, and the remaining prior net operating loss conversion subtraction allowed to the remaining members of the combined group shall be reduced accordingly.

(IV) If a taxpayer filed a separate report for the base year and is properly included in a combined report in a subsequent taxable year, then the prior net operating loss conversion subtraction pool of the combined group shall be increased by the amount of the remaining net operating loss conversion subtraction allowed to the taxpayer at the time the taxpayer is properly included in the combined group.

(4) The prior net operating loss conversion subtraction may be used to reduce the taxpayer's tax on allocated business income to the higher of the tax on the capital base under paragraph (b) of this subdivision or the fixed dollar minimum under paragraph (d) of this subdivision. Any amount of unused subtraction shall be carried forward to subsequent taxable years or until tax years beginning on or after January first, two thousand thirty-six. Such amount carried forward shall not be subject to the one-tenth limitation for the subsequent tax year or years. However, if the taxpayer elects to compute its prior net operating loss conversion subtraction pursuant to item (IV) of subclause two of this clause, the taxpayer shall not carry forward any amount of such subtraction beyond its tax year beginning on or after January first, two thousand sixteen and before January first, two thousand seventeen.

(ix) Net operating loss deduction. In computing the business income base, a net operating loss deduction shall be allowed. A net operating loss deduction is the amount of net operating loss or losses from one or more taxable years that are carried forward to a particular income year. A net operating loss is the amount of a business loss incurred in a particular tax year multiplied by the apportionment factor for that year as determined under section two hundred ten-A of this article. The maximum net operating deduction that is allowed in a taxable year is the amount that reduces the taxpayer's tax on allocated business income to the higher of the tax on the capital base or the fixed dollar minimum. Such deduction and loss are determined in accordance with the following:

(1) Such net operating loss deduction is not limited to the amount allowed under section one hundred seventy-two of the internal revenue act.
code or the amount that would have been allowed if the taxpayer had not made an election under subchapter S of chapter one of the internal revenue code.

(2) Such net operating loss deduction shall not include any net operating loss incurred during any taxable year beginning prior to January first, two thousand fifteen, or during any taxable year in which the taxpayer was not subject to the tax imposed by this article.

(3) A taxpayer that files as part of a federal consolidated return but on a separate basis for purposes of this article must compute its deduction and loss as if it were filing on a separate basis for federal income tax purposes.

(4) A net operating loss may be carried forward to each of the twenty taxable years following the taxable year of the loss. A net operating loss may be carried back to each of the three taxable years preceding the taxable year of the loss; provided, however no loss can be carried back to a tax year prior to a tax year beginning on or after January first, two thousand fifteen. A taxpayer must apply both of these limitations in computing such net operating loss deduction.

(5) Such net operating loss deduction shall not include any net operating loss incurred during a New York S year; provided, however, a New York S year must be treated as a taxable year for purposes of determining the number of taxable years to which a net operating loss may be carried forward.

(6) Where there are two or more allocated net operating losses, or portions thereof, carried forward to be deducted in one particular tax year from allocated business income, the earliest allocated loss incurred must be applied first.

(b) Capital base. (1) The amount prescribed by this paragraph for taxable years beginning before January first, two thousand eight shall be computed at .178 percent for each dollar of the taxpayer's total business and investment capital, or the portion thereof allocated within the state as hereinafter provided. For taxable years beginning on or after January first, two thousand eight, the amount prescribed by this paragraph shall be computed at .15 percent for each dollar of the taxpayer's total business and investment capital, or the portion thereof allocated within the state as hereinafter provided for taxable years beginning before January first, two thousand sixteen. However, in the case of a cooperative housing corporation as defined in the internal revenue code, the applicable rate shall be .04 percent until taxable years beginning on or after January first, two thousand twenty. The rate of tax for subsequent tax years shall be as follows: .125 percent for taxable years beginning on or after January first, two thousand sixteen and before January first, two thousand seventeen; .100 percent for taxable years beginning on or after January first, two thousand seventeen and before January first, two thousand eighteen; .075 percent for taxable years beginning on or after January first, two thousand eighteen and before January first, two thousand nineteen; .050 percent for taxable years beginning on or after January first, two thousand nineteen and before January first, two thousand twenty; .025 percent for taxable years beginning on or after January first, two thousand twenty and before January first, two thousand twenty-one; and zero percent for years beginning on or after January first, two thousand twenty-one. The rate of tax for a qualified New York manufacturer for tax years subsequent to taxable years beginning on or after January first, two thousand fifteen and before January first, two thousand sixteen shall be .106 percent for taxable years beginning on or after January first, two thousand sixteen and before January first, two thousand seventeen; .085 percent for taxable years beginning on or after January first, two thousand seventeen and before January first, two thousand eighteen; .056 percent for taxable years beginning on or after January first, two thousand eighteen and before January first, two thousand nineteen; .038 percent for taxable years beginning on or after January first, two thousand twenty and before January first, two thousand twenty-one; and zero percent for years beginning on or after January first, two thousand twenty-one.
percent for taxable years beginning on or after January first, two thousand nineteen and before January first, two thousand twenty; .019 percent for taxable years beginning on or after January first, two thousand twenty and before January first, two thousand twenty-one; and zero percent for years beginning on or after January first, two thousand twenty-one. In no event shall the amount prescribed by this paragraph exceed three hundred fifty thousand dollars for qualified New York manufacturers and for all other taxpayers [ten] five million dollars for taxable years beginning on or after January first, two thousand eight but before January first, two thousand eleven and one million dollars for taxable years beginning on or after January first, two thousand eleven].

(2) For purposes of subparagraph one of this paragraph, the term "manufacturer" shall mean a taxpayer which during the taxable year is principally engaged in the production of goods by manufacturing, processing, assembling, refining, mining, extracting, farming, agriculture, horticulture, floriculture, viticulture or commercial fishing. Moreover, for purposes of computing the capital base in a combined report, the combined group shall be considered a "manufacturer" for purposes of this subparagraph only if the combined group during the taxable year is principally engaged in the activities set forth in this subparagraph, or any combination thereof. A taxpayer or a combined group shall be "principally engaged" in activities described above if, during the taxable year, more than fifty percent of the gross receipts of the taxpayer or combined group, respectively, are derived from receipts from the sale of goods produced by such activities. In computing a combined group's gross receipts, intercorporate receipts shall be eliminated. A "qualified New York manufacturer" is a manufacturer that has property in New York that is described in [clause (A) of subparagraph (i) of paragraph (b) of subdivision [twelve of this section] one of section 210-B of this article] and either (i) the adjusted basis of that property for federal income tax purposes at the close of the taxable year is at least one million dollars or (ii) all of its real and personal property is located in New York. In addition, a "qualified New York manufacturer" means a taxpayer that is defined as a qualified emerging technology company under paragraph (c) of subdivision one of section thirty-one hundred two-e of the public authorities law regardless of the ten million dollar limitation expressed in subparagraph one of such paragraph. A taxpayer or, in the case of a combined report, a combined group, that does not satisfy the principally engaged test may be a qualified New York manufacturer if the taxpayer or the combined group employs during the taxable year at least two thousand five hundred employees in manufacturing in New York and the taxpayer or the combined group has property in the state used in manufacturing, the adjusted basis of which for federal income tax purposes at the close of the taxable year is at least one hundred million dollars.

(3) For a qualified New York manufacturer, as defined in subparagraph two of this paragraph, the rate at which the tax is computed in effect for taxable years beginning on or after January first, two thousand thirteen and before January first, two thousand fourteen shall be reduced by nine and two-tenths percent for taxable years commencing on or after January first, two thousand fourteen and before January first, two thousand fifteen, twelve and three-tenths percent for taxable years commencing on or after January first, two thousand fifteen and before January first, two thousand sixteen, fifteen and four-tenths percent for taxable years commencing on or after January first, two thousand sixteen and before January first, two thousand eighteen, and twenty-five percent for taxable years beginning on or after January first, two thousand eighteen.

(c) Minimum taxable income bases. (i) For taxable years beginning after nineteen hundred eighty-six and before nineteen hundred eighty-
nine, the amount prescribed by this paragraph shall be computed at the rate of three and one-half percent of the taxpayer's pre-nineteen hundred ninety minimum taxable income base. For taxable years beginning in nineteen hundred eighty-nine, the amount prescribed by this paragraph shall be computed at the rate of five percent of the taxpayer's pre-nineteen hundred ninety minimum taxable income base. A "taxpayer's pre-nineteen hundred ninety minimum taxable income base" shall mean the portion of the taxpayer's entire net income allocated within the state as hereinafter provided, subject to any modification required by paragraphs (d) and (e) of subdivision three of this section.

(ii) (A) For taxable years beginning on or after January first, two thousand seven, the amount prescribed by this paragraph shall be computed at the rate of one and one-half percent of the taxpayer's minimum taxable income base. The "taxpayer's minimum taxable income base" shall mean the portion of the taxpayer's minimum taxable income allocated within the state as hereinafter provided, subject to any modifications required by paragraphs (d) and (e) of subdivision three of this section.

(B) For taxable years beginning on or after January first, two thousand twelve and before January first, two thousand fifteen, the amount prescribed by this paragraph for an eligible qualified New York manufacturer shall be computed at the rate of seventy-five hundredths (.75) percent of the taxpayer's minimum taxable income base. For purposes of this clause, the term "eligible qualified New York manufacturer" shall have the same meaning as in subparagraph (vi) of paragraph (a) of this subdivision.

(iii) For a qualified New York manufacturer, as defined in subparagraph (vi) of paragraph (a) of this subdivision, the rate at which the tax is computed in effect for taxable years beginning on or after January first, two thousand thirteen and before January first, two thousand fourteen for qualified New York manufacturers shall be reduced by nine and two-tenths percent for taxable years commencing on or after January first, two thousand fourteen and before January first, two thousand fifteen, twelve and three-tenths percent for taxable years commencing on or after January first, two thousand fifteen and before January first, two thousand sixteen, fifteen and four-tenths percent for taxable years commencing on or after January first, two thousand sixteen and before January first, two thousand eighteen, and twenty-five percent for taxable years beginning on or after January first, two thousand eighteen.

(d) Fixed dollar minimum. (1) The amount prescribed by this paragraph shall be for a taxpayer which during the taxable year has:

(A) a gross payroll of six million two hundred fifty thousand dollars or more, one thousand five hundred dollars;

(B) a gross payroll of less than six million two hundred fifty thousand dollars but more than one million dollars, four hundred twenty-five dollars;

(C) a gross payroll of no more than one million dollars but more than five hundred thousand dollars, three hundred twenty-five dollars;

(D) a gross payroll of no more than five hundred thousand dollars but more than two hundred fifty thousand dollars, two hundred twenty-five dollars;

(E) a gross payroll of two hundred fifty thousand dollars or less (except as prescribed in clause (F) of this subparagraph), one hundred dollars;

(F) a gross payroll of one thousand dollars or less, with total receipts within and without this state of one thousand dollars or less, and the average value of the assets of which are one thousand dollars or less, eight hundred dollars.

(2) For purposes of this paragraph:

(A) gross payroll shall be the same as the total wages, salaries and other personal service compensation of all the taxpayer's employees,
within and without this state, as defined in subparagraph three of paragraph (a) of subdivision three of this section, except that general executive officers shall not be excluded.

(B) total receipts shall be the same as receipts within and without this state as defined in subparagraph two of paragraph (a) of subdivision three of this section.

(C) average value of the assets shall be the same as prescribed by subdivision two of this section without reduction for liabilities.

(3) If the taxable year is less than twelve months, the amount prescribed by this paragraph shall be reduced by twenty-five percent if the period for which the taxpayer is subject to tax is more than six months but not more than nine months and by fifty percent if the period for which the taxpayer is subject to tax is not more than six months. Provided, however, that in determining the amount of gross payroll and total receipts for purposes of subparagraph one of this paragraph, where the taxable year is less than twelve months, the amount of each shall be determined by dividing the amount of each with respect to the taxable year by the number of months in such taxable year and multiplying the result by twelve. If the taxable year is less than twelve months, the amount of New York receipts for purposes of subparagraph four of this paragraph is determined by dividing the amount of the receipts for the taxable year by the number of months in the taxable year and multiplying the result by twelve.

(4) Notwithstanding subparagraphs one and two of this paragraph, for taxable years beginning on or after January first, two thousand eight, the amount prescribed by this paragraph for New York S corporations will be determined in accordance with the following table:

<table>
<thead>
<tr>
<th>New York receipts are:</th>
<th>The fixed dollar minimum tax is:</th>
</tr>
</thead>
<tbody>
<tr>
<td>not more than $100,000</td>
<td>$ 25</td>
</tr>
<tr>
<td>more than $100,000 but not over $250,000</td>
<td>$ 50</td>
</tr>
<tr>
<td>S. 6359--D</td>
<td>55</td>
</tr>
<tr>
<td>otherwise the amount prescribed by this paragraph will be determined in accordance with the following table:</td>
<td></td>
</tr>
</tbody>
</table>

Provided further, the amount prescribed by this paragraph for a qualified New York manufacturer, as defined in subparagraph (vi) of paragraph (a) of this subdivision, and a qualified emerging technology company under paragraph (c) of subdivision one of section thirty-one hundred two-e of the public authorities law regardless of the ten million dollar limitation expressed in subparagraph one of such paragraph (c) will be determined in accordance with the following tables:

For tax years beginning on or after January 1, 2014 and before January 1, 2015:

<table>
<thead>
<tr>
<th>New York receipts are:</th>
<th>The fixed dollar minimum tax is:</th>
</tr>
</thead>
<tbody>
<tr>
<td>not more than $100,000</td>
<td>$ 23</td>
</tr>
<tr>
<td>more than $100,000 but not over $250,000</td>
<td>$ 68</td>
</tr>
<tr>
<td>more than $250,000 but not over $500,000</td>
<td>$ 159</td>
</tr>
<tr>
<td>more than $500,000 but not over $1,000,000</td>
<td>$ 454</td>
</tr>
<tr>
<td>more than $1,000,000 but not over $5,000,000</td>
<td>$1,362</td>
</tr>
<tr>
<td>more than $5,000,000 but not over $25,000,000</td>
<td>$3,178</td>
</tr>
<tr>
<td>Over $25,000,000</td>
<td>$4,500</td>
</tr>
</tbody>
</table>

For tax years beginning on or after January 1, 2015 and before January 1, 2016:
If New York receipts are:  
The fixed dollar minimum tax is:  

not more than $100,000  

more than $100,000 but not over $250,000  

more than $250,000 but not over $500,000  

more than $500,000 but not over $1,000,000  

more than $1,000,000 but not over $5,000,000  

more than $5,000,000 but not over $25,000,000  

Over $25,000,000

For tax years beginning on or after January 1, 2016 and before January 1, 2018:

If New York receipts are:  
The fixed dollar minimum tax is:  

not more than $100,000  

more than $100,000 but not over $250,000  

more than $250,000 but not over $500,000  

more than $500,000 but not over $1,000,000  

more than $1,000,000 but not over $5,000,000  

more than $5,000,000 but not over $25,000,000  

Over $25,000,000

For tax years beginning on or after January 1, 2018:

If New York receipts are:  
The fixed dollar minimum tax is:  

not more than $100,000  

more than $100,000 but not over $250,000  

more than $250,000 but not over $500,000  

more than $500,000 but not over $1,000,000  

more than $1,000,000 but not over $5,000,000  

Over $5,000,000 but not over $25,000,000  

Over $25,000,000

Otherwise the amount prescribed by this paragraph will be determined in accordance with the following table:

If New York receipts are:  
The fixed dollar minimum tax is:  

not more than $100,000  

more than $100,000 but not over $250,000  

more than $250,000 but not over $500,000  

more than $500,000 but not over $1,000,000  

more than $1,000,000 but not over $5,000,000  

Over $5,000,000 but not over $25,000,000  

Over $25,000,000

For purposes of this paragraph, New York receipts are the receipts computed in accordance with subparagraph two of paragraph (a) of subdivision three of this included in the numerator of the apportionment factor determined under section two hundred ten-A for the taxable year. (2) If the taxable year is less than twelve months, the amount of New York receipts is determined by dividing the amount of the receipts for the taxable year by the number of months in the taxable year and multiplying the result by twelve. In the case of a termination year of a New York S corporation, the sum of the tax computed under this paragraph for the S short year and for the C short year shall not be less than the amount computed under this paragraph as if the corporation were a New York C corporation.
York C corporation for the entire taxable year.

(5) For taxable years beginning on or after January first, two thousand twelve and before January first, two thousand fifteen, the amounts prescribed in subparagraphs one and four of this paragraph as the fixed dollar minimum tax for an eligible qualified New York manufacturer shall be one-half of the amounts stated in those subparagraphs. For purposes of this subparagraph, the term "eligible qualified New York manufacturer" shall have the same meaning as in subparagraph (vi) of paragraph (a) of this subdivision.

(6) For a qualified New York manufacturer, as defined in subparagraph (vi) of paragraph (a) of this subdivision, the amounts prescribed in subparagraphs one and four of this paragraph in effect for taxable years beginning on or after January first, two thousand thirteen and before January first, two thousand fourteen for qualified New York manufacturers shall be reduced by nine and two-tenths percent for taxable years commencing on or after January first, two thousand fourteen and before January first, two thousand fifteen, twelve and three-tenths percent for taxable years commencing on or after January first, two thousand fifteen and before January first, two thousand sixteen, fifteen and four-tenths percent for taxable years commencing on or after January first, two thousand sixteen and before January first, two thousand eighteen, and twenty-five percent for taxable years beginning on or after January first, two thousand eighteen.

(e) Subsidiary capital base. (1) The amount prescribed by this paragraph shall be computed at the rate of nine-tenths of a mill for each dollar of the portion of the taxpayer's subsidiary capital allocated within the state as hereinafter provided.

(2) For purposes of this paragraph, the amount of such subsidiary capital, prior to allocation, shall be reduced by the applicable percentage of the taxpayer's (i) investments in the stock of, and any indebtedness from, subsidiaries subject to tax under section one hundred eighty-six of this chapter (but only to the extent such indebtedness is included in subsidiary capital), and (ii) investments in the stock of, and any indebtedness from, subsidiaries subject to tax under article thirty-two or thirty-three of this chapter (but only to the extent such indebtedness is included in subsidiary capital). For purposes of clause (i) of this subparagraph, the applicable percentage shall be thirty percent for taxable years beginning in two thousand, and one hundred and any indebtedness from, subsidiaries subject to tax under article thirty-two or thirty-three of this chapter (but only to the extent such indebtedness is included in subsidiary capital). For purposes of clause (ii) of this subparagraph, the applicable percentage shall be one hundred percent for taxable years beginning after nineteen hundred ninety-nine.

(f) For purposes of this section, the term "small business taxpayer" shall mean a taxpayer (i) which has an entire net income of not more than three hundred ninety thousand dollars for the taxable year; (ii) [which constitutes a small business as defined in section 1244(c)(3) of internal revenue code (without regard to the second sentence of subparagraph (A) thereof) as of the last day of the taxable year] the aggregate amount of money and other property received by the corporation for stock, as a contribution to capital, and as paid-in surplus, does not exceed one million dollars; [and] (iii) which is not part of an affiliated group, as defined in section 1504 of the internal revenue code, unless such group, if it had filed a report under this article on a combined basis, would have itself qualified as a "small business taxpayer" pursuant to this subdivision; and (iv) which has an average number of individuals, excluding general executive officers, employed full-time in the state during the taxable year of one hundred or fewer. If the taxable period to which subparagraph (i) of this paragraph applies is less than twelve months, entire net income under such subparagraph shall be placed on an annual basis by multiplying the entire net income by twelve and dividing the result by the number of months in the period.
For purposes of subparagraph (ii) of this paragraph, the amount taken into account with respect to any property other than money shall be the amount equal to the adjusted basis to the corporation of such property for determining gain, reduced by any liability to which the property was subject or which was assumed by the corporation. The determination under the preceding sentence shall be made as of the time the property was received by the corporation. For purposes of subparagraph (iii) of this section, "average number of individuals, excluding general executive officers, employed full-time" shall be computed by ascertaining the number of such individuals employed by the taxpayer on the thirty-first day of March, the thirtieth day of June, the thirtieth day of September and the thirty-first day of December during each taxable year or other applicable period, by adding together the number of such individuals ascertained on each of such dates and dividing the sum so obtained by the number of such dates occurring within such taxable year or other applicable period. An individual employed full-time means an employee in a job consisting of at least thirty-five hours per week, or two or more employees who are in jobs that together constitute the equivalent of a job at least thirty-five hours per week (full-time equivalent). Full-time equivalent employees in the state includes all employees regularly connected with or working out of an office or place of business of the taxpayer within the state.

(g) New York S corporations. (1) General. The amount prescribed by this paragraph shall be, in the case of each New York S corporation, (i) the higher of the amounts prescribed in paragraphs (a) and (d) of this subdivision (other than the amount prescribed in the final clause of subparagraph one of that paragraph (d)) (ii) reduced by the article twenty-two tax equivalent; provided, however, that the amount thus determined shall not be less than the lowest of the amounts prescribed in subparagraph one of that paragraph (d) (applying the provisions of subparagraph three of that paragraph as necessary). Provided, however, notwithstanding any provision of this paragraph, in taxable years beginning in two thousand three and before two thousand eight, the amount prescribed by this paragraph shall be the amount prescribed in subparagraph one of that paragraph (d) (applying the provisions of subparagraph three of that paragraph as necessary) and applying the calculation of that amount in the case of a termination year as set forth in subparagraph four of this paragraph as necessary. In taxable years beginning in two thousand eight and thereafter, the amount prescribed by this paragraph is the amount prescribed in subparagraph four of that paragraph (d) (applying the provisions of subparagraph three of that paragraph as necessary) and applying the calculation of that amount in the case of a termination year as set forth in subparagraph four of this paragraph as necessary.

(2) Article twenty-two tax equivalent. For taxable years beginning before July first, nineteen hundred ninety-nine, the article twenty-two tax equivalent is the amount computed under paragraph (a) of this subdivision by substituting for the rate therein the rate of 7.875 percent. For taxable years beginning after June thirtieth, nineteen hundred ninety-nine, and before July first, two thousand, the article twenty-two tax equivalent is the amount computed under paragraph (a) of this subdivision by substituting for the rate therein the rate of 7.525 percent. For taxable years beginning after June thirtieth, two thousand one and before July first, two thousand two, the article twenty-two tax equivalent is the amount computed under paragraph (a) of this subdivision by substituting for the rate therein the rate of 7.175 percent. For taxable years beginning after June thirtieth, two thousand three and before two thousand eight, the article twenty-two tax equivalent is the amount computed under paragraph (a) of this subdivision by substituting for the rate therein the rate of 6.85 percent. For taxable years beginning after June thirtieth, two thousand three, the article twenty-two tax equiv-
alent is the amount computed under paragraph (a) of this subdivision by substituting for the rate therein the rate of 7.1425 percent.

(3) Small business taxpayers. Notwithstanding the provisions of subparagraphs one and two of this paragraph, in the case of a New York S corporation which is a small business taxpayer, as defined in paragraph (f) of this subdivision, the following provisions shall apply:

(A) For taxable years beginning before July first, nineteen hundred ninety-nine, the article twenty-two tax equivalent is the amount computed under paragraph (a) of this subdivision by substituting for the rate therein the rate of 7.875 percent.

(B) For taxable years beginning after June thirtieth, nineteen hundred ninety-nine and before July first, two thousand three, the amount computed under paragraph (a) of this subdivision, as referred to in subparagraph one of this paragraph, shall be computed by substituting for the rate therein the rate of 7.5 percent, and the article twenty-two tax equivalent under paragraph (a) of this subdivision shall be computed as follows:

(i) if the entire net income base is not more than two hundred thousand dollars, the article twenty-two tax equivalent is the amount computed under paragraph (a) of this subdivision by substituting for the rate therein the rate of 7.45 percent;

(ii) if the entire net income base is more than two hundred thousand dollars but not over two hundred ninety thousand dollars, the article twenty-two tax equivalent shall be computed as the sum of (I) fourteen thousand nine hundred dollars, (II) six and eighty-five hundredths percent of the first fifty thousand dollars in excess of the entire net income base over two hundred thousand dollars, and (III) three and eighty-five hundredths percent of the excess, if any, of the entire net income base over two hundred fifty thousand dollars.

(C) For taxable years beginning after June thirtieth, two thousand three, the amount computed under paragraph (a) of this subdivision, as referred to in subparagraph one of this paragraph, shall be computed by substituting for the rate therein the rate of 7.5 percent, and the article twenty-two tax equivalent under paragraph (a) of this subdivision shall be computed as follows:

(i) if the entire net income base is not more than two hundred thousand dollars, the article twenty-two tax equivalent is the amount computed under paragraph (a) of this subdivision by substituting for the rate therein the rate of 7.4725 percent;

(ii) if the entire net income base is more than two hundred thousand dollars but not over two hundred ninety thousand dollars, the article twenty-two tax equivalent shall be computed as the sum of (I) fourteen thousand nine hundred forty-five dollars, (II) 7.1425 percent of the first fifty thousand dollars in excess of the entire net income base over two hundred thousand dollars, and (III) 5.4925 percent of the excess, if any, of the entire net income base over two hundred fifty thousand dollars.

(4) Termination year. In the case of a termination year, the tax for the S short year shall be computed under this paragraph without regard to the fixed dollar minimum tax prescribed in paragraph (d) of this subdivision, and the tax for the C short year shall be computed under the opening paragraph of this subdivision without regard to the fixed dollar minimum tax prescribed under such paragraph (d), but in no event shall the sum of the tax for the S short year and the tax for the C short year be less than the fixed dollar minimum tax under paragraph (d) of this subdivision computed as if the corporation were a New York C corporation for the entire taxable year.

§ 13. Subdivision 1-c of section 210 of the tax law, as amended by chapter 1043 of the laws of 1981, the opening paragraph and paragraph (a) as amended by chapter 817 of the laws of 1987, and paragraph (b) as amended by section 12 of part Y of chapter 63 of the laws of 2000, is
amended to read as follows:

1–c. The computations specified in paragraph (b) of subdivision one of this section shall not apply to the first two taxable years of a taxpayer which, for one or both such years, is a small business concern. A small business concern as defined in subdivision three of this chapter, and (2) does not qualify as a small business corporation as defined in paragraph three of subdivision one of section twelve hundred forty-four of the internal revenue code (without regard to the second sentence of subparagraph (A) thereof) as of the last day of the taxable year, (b) is not a corporation over fifty percent of the number of shares of stock of which entitling the holders thereof to vote for the election of directors or trustees is owned by a taxpayer which (1) is subject to tax under this article; section one hundred eighty-three, one hundred eighty-four or one hundred eighty-five of article nine; article thirty of this chapter, and (2) does not qualify as a small business corporation as defined in paragraph three of this section; or which would have been subject to tax under such article twenty-three (as such article was in effect on January first, nineteen hundred eighty) or the income (or losses) of which (or was) includable under article twenty-two or thirty of this chapter, and (c) is not a corporation which is substantially similar in operation and in ownership to a business entity (or entities) taxable, or previously taxable, under this article; section one hundred eighty-three, one hundred eighty-four, one hundred eighty-five or one hundred eighty-six of article nine; article thirty-two or thirty-three of this chapter; article twenty-three of this chapter or which would have been subject to tax under such article twenty-three (as such article was in effect on January first, nineteen hundred eighty) or the income (or losses) of which is (or was) includable under article twenty-two of this chapter, and (d) at least ninety percent of the assets of such corporation (valued at original cost) were located and employed in this state during the taxable year and eighty percent of the employees of such corporation (as ascertained within the meaning and intent of subparagraph three of paragraph (a) of subdivision three of this section) were principally employed in this state during the taxable year] taxpayer as defined in paragraph (f) of subdivision one of this section.

§ 14. Subdivision 2 of section 210 of the tax law, as amended by chapter 760 of the laws of 1992, is amended to read as follows:

2. The amount of [subsidiary capital,] investment capital and business capital shall each be determined by taking the average value of the assets included therein (less liabilities deductible therefrom pursuant to the provisions of subdivisions [four,] five and seven of section two hundred eight), and, if the period covered by the report is other than a period of twelve calendar months, by multiplying such value by the number of calendar months or major parts thereof included in such period, and dividing the product thus obtained by twelve. For purposes of this subdivision, real property and marketable securities shall be valued at fair market value and the value of personal property other than marketable securities shall be the value thereof shown on the books and records of the taxpayer in accordance with generally accepted accounting principles.

§ 15. Subdivisions 3, 3-a, 4, 5, 6, 7, 8, 9, 10, 11, 12, 12-A, 12-B, 12-C, 12-D, 12-E, 12-F, 12-G, 13, 14, 15, 16, 17, 18, 19, 20, 21, 21-a, 22, 23, 23-a, 24, 25, 25-a, 26, 26-a, 27, 28, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, 41, 42, 43, 44, 45, 46, and 47 of section 210 of the tax law are REPEALED.
lations of the commissioner, unless another method for computing such
tax is required or allowed by such regulations. Under the aggregate
method, a corporation that is a partner in a partnership is viewed as
having an undivided interest in the partnership's assets, liabilities,
and items of receipts, income, gain, loss and deduction. Under the
aggregate method, the corporation that is a partner in a partnership is
treated as participating in the partnership's transactions and activ-
ities.

§ 16. The tax law is amended by adding a new section 210-A to read as
follows:

§ 210-A. Apportionment. 1. General. Business income and capital shall
be apportioned to the state by the apportionment factor determined
pursuant to this section. The apportionment factor is a fraction, deter-
mind by including only those receipts, net income, net gains, and other
items described in this section that are included in the computation of
the taxpayer's business income for the taxable year. The numerator of
the apportionment fraction shall be equal to the sum of all the amounts
required to be included in the numerator pursuant to the provisions of
this section and the denominator of the apportionment fraction shall be
equal to the sum of all the amounts required to be included in the
denominator pursuant to the provisions of this section.

2. Sales of tangible personal property, electricity, and real prop-
erty. (a) Receipts from sales of tangible personal property where ship-
ments are made to points within the state or the destination of the
property is a point in the state shall be included in the numerator of
the apportionment fraction. Receipts from sales of tangible personal
property where shipments are made to points within and without the state
or the destination is within and without the state shall be included in
the denominator of the apportionment fraction.

(b) Receipts from sales of electricity delivered to points within the
state shall be included in the numerator of the apportionment fraction.
Receipts from sales of electricity delivered to points within and without
the state shall be included in the denominator of the apportionment
fraction.

(c) Receipts from sales of tangible personal property and electricity
that are traded as commodities as described in section 475 of the inter-
nal revenue code are included in the apportionment fraction in accord-
ance with clause (I) of subparagraph two of paragraph (a) of subdivision
five of this section.

(d) Net gains (not less than zero) from the sales of real property
located within the state shall be included in the numerator of the
apportionment fraction. Net gains (not less than zero) from the sales of
real property located within and without the state shall be included in
the denominator of the apportionment fraction.

3. Rentals and royalties. (a) Receipts from rentals of real and tangi-
ble personal property located within the state are included in the
numerator of the apportionment fraction. Receipts from rentals of real
and tangible personal property located within and without the state shall
be included in the denominator of the apportionment fraction.

(b) Receipts of royalties from the use of patents, copyrights, trade-
marks, and similar intangible personal property within the state are
included in the numerator of the apportionment fraction. Receipts of
royalties from the use of patents, copyrights, trademarks and similar
intangibles within and without the state are included in the denominator
of the apportionment fraction. A patent, copyright, trademark or similar

intangible property is used in the state to the extent that the activ-
ities thereunder are carried on in the state.

(c) Receipts from the sales of rights for closed-circuit and cable
television transmissions of an event (other than events occurring on a
regularly scheduled basis) taking place within the state as a result of the rendition of services by employees of the corporation, as athletes, entertainers or performing artists are included in the numerator of the apportionment fraction to the extent that such receipts are attributable to such transmissions received or exhibited within the state. Receipts from all sales of rights for closed-circuit and cable television transmissions of an event are included in the denominator of the apportionment fraction.

4. Digital products. (a) For purposes of determining the apportionment fraction under this section, the term "digital product" means any property or service, or combination thereof, of whatever nature delivered to the purchaser through the use of wire, cable, fiber-optic, laser, microwave, radio wave, satellite or similar successor media, or any combination thereof. Digital product includes, but is not limited to, an audio work, audiovisual work, visual work, book or literary work, graphic work, game, information or entertainment service, storage of digital products and computer software by whatever means delivered. The term "delivered to" includes furnished or provided to or accessed by. A digital product does not include legal, medical, accounting, architectural, research, analytical, engineering or consulting services provided by the taxpayer.

(b) Receipts from the sale of, licence to use, or granting of remote access to digital products within the state, determined according to the hierarchy of methods set forth in subparagraphs one through four of paragraph (c) of this subdivision, shall be included in the numerator of the apportionment fraction. Receipts from the sale of, licence to use, or granting of remote access to digital products within and without the state shall be included in the denominator of the apportionment fraction. The taxpayer must exercise due diligence under each method described in paragraph (c) of this subdivision before rejecting it and proceeding to the next method in the hierarchy, and must base its determination on information known to the taxpayer or information that would be known to the taxpayer upon reasonable inquiry. If the receipt for a digital product is comprised of a combination of property and services, it cannot be divided into separate components and is considered to be one receipt regardless of whether it is separately stated for billing purposes. The entire receipt must be allocated by this hierarchy.

(c) Hierarchy of sourcing methods. (1) The customer's primary use location of the digital product;

(2) The location where the digital product is received by the customer, or is received by a person designated for receipt by the customer;

(3) The apportionment fraction determined pursuant to this subdivision for the preceding taxable year for such digital product; or

(4) The apportionment fraction in the current taxable year for those digital products that can be sourced using the hierarchy of sourcing methods in subparagraphs one and two of this paragraph.

5. Financial transactions. (a) Financial instruments. A financial instrument is a "qualified financial instrument" if it is marked to market under section 475 or section 1256 of the internal revenue code, provided that loans secured by real property shall not be qualified financial instruments. A financial instrument is a "nonqualified financial instrument" if it is not a qualified financial instrument.

(1) Fixed percentage method for qualified financial instruments. In determining the inclusion of receipts and net gains from qualified financial instruments in the apportionment fraction, taxpayers may elect to use the fixed percentage method described in this subparagraph for qualified financial instruments. The election is irrevocable, applies to all qualified financial instruments, and must be made on an annual basis on the taxpayer's original, timely filed return. If the taxpayer elects the fixed percentage method, then all income, gain or loss, from qualified financial instruments constitutes business income, gain or loss. If
the taxpayer does not elect to use the fixed percentage method, then receipts and net gains are included in the apportionment fraction in accordance with the customer sourcing method described in subparagraph two of this paragraph. Under the fixed percentage method, eight percent of all net income (not less than zero) from qualified financial instruments is included in the numerator of the apportionment fraction. All net income (not less than zero) from qualified financial instruments is included in the denominator of the apportionment fraction.

(2) Customer sourcing method. Receipts and net gains from qualified financial instruments, in cases where the taxpayer did not elect to use the fixed percentage method described in subparagraph one of this paragraph, and from nonqualified financial instruments are included in the apportionment fraction in accordance with this subparagraph. For purposes of this paragraph, an individual is deemed to be located in the state if his or her billing address is in the state. A business entity is deemed to be located in the state if its commercial domicile is located in the state.

(A) Loans. (i) Receipts constituting interest from loans secured by real property located within the state shall be included in the numerator of the apportionment fraction. Receipts constituting interest from loans secured by real property located within and without the state shall be included in the denominator of the apportionment fraction.

(ii) Receipts constituting interest from loans not secured by real property shall be included in the numerator of the apportionment fraction if the borrower is located in the state. Receipts constituting interest from loans not secured by real property, whether the borrower is located within or without the state, shall be included in the denominator of the apportionment fraction.

(iii) Net gains (not less than zero) from sales of loans secured by real property are included in the numerator of the apportionment fraction as provided in this subclause. The amount of net gains from the sale of loans secured by real property included in the numerator of the apportionment fraction is determined by multiplying the net gains by a fraction the numerator of which is the amount of gross proceeds from sales of loans secured by real property located within the state and the denominator of which is the gross proceeds from sales of loans secured by real property within and without the state. Gross proceeds shall be determined after the deduction of any cost incurred to acquire the loans but shall not be less than zero. Net gains (not less than zero) from sales of loans secured by real property within and without the state are included in the denominator of the apportionment fraction.

(iv) Net gains (not less than zero) from sales of loans not secured by real property are included in the numerator of the apportionment fraction as provided in this subclause. The amount of net gains from the sale of loans not secured by real property included in the numerator of the apportionment fraction is determined by multiplying the net gains by a fraction, the numerator of which is the amount of gross proceeds from sales of loans not secured by real property to purchasers located within the state and the denominator of which is the amount of gross receipts from sales of loans not secured by real property to purchasers located within and without the state. Gross proceeds shall be determined after the deduction of any cost incurred to acquire the loans but shall not be less than zero. Net gains (not less than zero) from sales of loans not secured by real property are included in the denominator of the apportionment fraction.

(B) Federal, state, and municipal debt. Receipts constituting interest and net gains from sales of debt instruments issued by the United States, any state, or political subdivision of a state shall not be included in the numerator of the apportionment fraction. Receipts constituting interest and net gains (not less than zero) from sales of debt instruments issued by the United States and the state of New York.
or its political subdivisions shall be included in the denominator of the apportionment fraction. Fifty percent of the receipts constituting interest and net gains (not less than zero) from sales of debt instruments issued by other states or their political subdivisions shall be included in the denominator of the apportionment fraction.

(C) Asset backed securities and other government agency debt. Eight percent of the interest income from asset backed securities or other securities issued by government agencies, including but not limited to securities issued by the Government National Mortgage Association (GNMA), the Federal National Mortgage Association (FNMA), the Federal Home Loan Mortgage Corporation (FHLMC), or the Small Business Administration, or asset backed securities issued by other entities shall be included in the numerator of the apportionment fraction. Eight percent of the net gains (not less than zero) from sales of asset backed securities or other securities issued by government agencies, including but not limited to securities issued by GNMA, FNMA, or FHLMC, the Small Business Administration, or sales of other asset backed securities that are sold through a registered securities broker or dealer or through a licensed exchange, shall be included in the numerator of the apportionment fraction. The amount of net gains (not less than zero) from sales of other asset backed securities included in the numerator of the apportionment fraction is determined by multiplying such net gains by a fraction, the numerator of which is the amount of gross proceeds from such sales to purchasers located in the state and the denominator of which is the amount of gross proceeds from such sales to purchasers located within and without the state. Receipts constituting interest from asset backed securities and other securities referenced in this clause and net gains (not less than zero) from sales of asset backed securities and other securities referenced in this clause are included in the denominator of the apportionment fraction. Gross proceeds shall be determined after the deduction of any cost to acquire the securities but shall not be less than zero.

(D) Corporate bonds. Receipts constituting interest from corporate bonds are included in the numerator of the apportionment fraction if the commercial domicile of the issuing corporation is in the state. Eight percent of the net gains (not less than zero) from sales of corporate bonds sold through a registered securities broker or dealer or through a licensed exchange is included in the numerator of the apportionment fraction. The amount of net gains (not less than zero) from other sales of corporate bonds included in the numerator of the apportionment fraction is determined by multiplying such net gains by a fraction, the numerator of which is the amount of gross proceeds from such sales to purchasers located in the state and the denominator of which is the amount of gross proceeds from sales to purchasers located within and without the state. Receipts constituting interest from corporate bonds, whether the issuing corporation’s commercial domicile is within or without the state, and net gains (not less than zero) from sales of corporate bonds to purchasers within and without the state are included in the denominator of the apportionment fraction. Gross proceeds shall be determined after the deduction of any cost to acquire the bonds but shall not be less than zero.

(E) Reverse repurchase agreements and securities borrowing agreements. Eight percent of net interest income (not less than zero) from reverse repurchase agreements and securities borrowing agreements shall be included in the numerator of the apportionment fraction. Net interest income (not less than zero) from reverse repurchase agreements and securities borrowing agreements is included in the denominator of the apportionment fraction. Net interest income from reverse repurchase agreements and securities borrowing agreements is determined for purposes of this subdivision after the deduction of the interest expense from the
taxpayer's repurchase agreements and securities lending agreements but cannot be less than zero. For this calculation, the amount of such interest expense is the interest expense associated with the sum of the value of the taxpayer's repurchase agreements where it is the seller/borrower plus the value of the taxpayer's securities lending agreements where it is the securities lender, provided such sum is limited to the sum of the value of the taxpayer's reverse repurchase agreements where it is the purchaser/lender plus the value of the taxpayer's securities lending agreements where it is the securities borrower.

(F) Federal funds. Eight percent of the net interest (not less than zero) from federal funds is included in the numerator of the apportionment fraction. The net interest (not less than zero) from federal funds is included in the denominator of the apportionment fraction. Net interest from federal funds is determined after deduction of interest expense from federal funds.

(G) Dividends and net gains from sales of stock or partnership interests. Dividends from stock, net gains (not less than zero) from sales of stock and net gains (not less than zero) from the sale of partnership interests are not included in either the numerator or denominator of the apportionment fraction unless the commissioner determines pursuant to subdivision eleven of this section that inclusion of such dividends and net gains (not less than zero) is necessary to properly reflect the business income or capital of the taxpayer.

(H) Other financial instruments. (i) Receipts constituting interest from other financial instruments shall be included in the numerator of the apportionment fraction if the payor is located in the state. Receipts constituting interest from other financial instruments, whether the payor is within or without the state, are included in the denominator of the apportionment fraction.

(ii) Net gains (not less than zero) from sales of other financial instruments and other income (not less than zero) from other financial instruments where the purchaser or payor is located in the state are included in the numerator of the apportionment fraction, provided that, if the purchaser or payor is a registered securities broker or dealer or the transaction is made through a licensed exchange, then eight percent of the net gains (not less than zero) or other income (not less than zero) is included in the numerator of the apportionment fraction. Net gains (not less than zero) from sales of other financial instruments and other income (not less than zero) from other financial instruments are included in the denominator of the apportionment fraction.

(I) Physical commodities. Net income (not less than zero) from sales of physical commodities are included in the numerator of the apportionment fraction as provided in this subparagraph. The amount of net income from sales of physical commodities included in the numerator of the apportionment fraction is determined by multiplying the net income from sales of physical commodities by a fraction, the numerator of which is the amount of receipts from sales of physical commodities actually delivered to points within the state or, if there is no actual delivery of the physical commodity, sold to purchasers located in the state, and the denominator of which is the amount of receipts from sales of physical commodities actually delivered to points within and without the state or sold to purchasers located within and without the state. Net income (not less than zero) from sales of physical commodities is included in the denominator of the apportionment fraction. Net income (not less than zero) from sales of physical commodities is determined after the deduction of the cost to acquire or produce the physical commodities.

(b) Other receipts from broker or dealer activities. Receipts of a registered securities broker or dealer from securities or commodities broker or dealer activities described in this paragraph shall be deemed
to be generated within the state as described in subparagraphs one through eight of this paragraph. Receipts from such activities generated within the state shall be included in the numerator of the apportionment fraction. Receipts from such activities generated within and without the state shall be included in the denominator of the apportionment fraction. For the purposes of this paragraph, the term "securities" shall have the same meaning as in section 475(c)(2) of the internal revenue code and the term "commodities" shall have the same meaning as in section 475(e)(2) of the internal revenue code.

(1) Receipts constituting brokerage commissions derived from the execution of securities or commodities purchase or sales orders for the accounts of customers shall be deemed to be generated within the state if the mailing address in the records of the taxpayer of the customer who is responsible for paying such commissions is within the state.

(2) Receipts constituting margin interest earned on behalf of brokerage accounts shall be deemed to be generated within the state if the mailing address in the records of the taxpayer of the customer who is responsible for paying such margin interest is within the state.

(3)(A) Receipts constituting fees earned by the taxpayer for advisory services to a customer in connection with the underwriting of securities for such customer (such customer being the entity that is contemplating issuing or is issuing securities) or fees earned by the taxpayer for managing an underwriting shall be deemed to be generated within the state if the mailing address in the records of the taxpayer of such customer who is responsible for paying such fees is within the state.

(B) Receipts constituting the primary spread of selling concession from underwritten securities shall be deemed to be generated within the state if the customer is located in the state.

(C) The term "primary spread" means the difference between the price paid by the taxpayer to the issuer of the securities being marketed and the price received from the subsequent sale of the underwritten securities at the initial public offering price, less any selling concession and any fees paid to the taxpayer for advisory services or any manager's fees, if such fees are not paid by the customer to the taxpayer separately. The term "public offering price" means the price agreed upon by the taxpayer and the issuer at which the securities are to be offered to the public. The term "selling concession" means the amount paid to the taxpayer for participating in the underwriting of a security where the taxpayer is not the lead underwriter.

(4) Receipts constituting account maintenance fees shall be deemed to be generated within the state if the mailing address in the records of the taxpayer of the customer who is responsible for paying such account maintenance fees is within the state.

(5) Receipts constituting fees for management or advisory services, including fees for advisory services in relation to merger or acquisition activities, but excluding fees paid for services described in paragraph (d) of this subdivision, shall be deemed to be generated within the state if the mailing address in the records of the taxpayer of the customer who is responsible for paying such fees is within the state.

(6) Receipts constituting interest earned by the taxpayer on loans and advances made by the taxpayer to a corporation affiliated with the taxpayer but with which the taxpayer is not permitted or required to file a combined report pursuant to section two hundred ten-C of this article shall be deemed to arise from services performed at the principal place of business of such affiliated corporation.

(7) If the taxpayer receives any of the receipts enumerated in subparagraphs one through four of this paragraph as a result of a securities correspondent relationship such taxpayer has with another broker or dealer with the taxpayer acting in this relationship as the clearing firm, such receipts shall be deemed to be generated within the state to extent set forth in each of such subparagraphs. The amount of such
receipts shall exclude the amount the taxpayer is required to pay to the correspondent firm for such correspondent relationship. If the taxpayer receives any of the receipts enumerated in subparagraphs one through four of this paragraph as a result of a securities correspondent relationship such taxpayer has with another broker or dealer with the taxpayer acting in this relationship as the introducing firm, such receipts shall be deemed to be generated within the state to the extent set forth in each of such subparagraphs.

(8) If, for purposes of subparagraphs one, two, clause (A) of subparagraph three, four, or five of this paragraph the taxpayer is unable from its records to determine the mailing address of the customer, eight percent of the receipts is included in the numerator of the apportionment fraction.

(c) Receipts from credit card and similar activities. Receipts relating to the bank, credit, travel and entertainment card activities described in this paragraph shall be deemed to be generated within the state as described in subparagraphs one through four of this paragraph. Receipts from such activities generated within the state shall be included in the numerator of the apportionment fraction. Receipts from such activities generated within and without the state shall be included in the denominator of the apportionment fraction.

(1) Receipts constituting interest, and fees and penalties in the nature of interest, from bank, credit, travel and entertainment card receivables shall be deemed to be generated within the state if the mailing address of the card holder in the records of the taxpayer is in the state;

(2) Receipts from service charges and fees from such cards shall be deemed to be generated within the state if the mailing address of the card holder in the records of the taxpayer is in the state; and

(3) Receipts from merchant discounts shall be deemed to be generated within the state if the merchant is located within the state. In the case of a merchant with locations both within and without New York state, only receipts from merchant discounts attributable to sales made from locations within New York state are allocated to New York state. It shall be presumed that the location of the merchant is the address of the merchant shown on the invoice submitted by the merchant to the taxpayer.

(4) Receipts from credit card authorization processing, and clearing and settlement processing received by credit card processors shall be deemed to be generated within the state if the location where the credit card processor’s customer accesses the credit card processor’s network is located within the state. The amount of all other receipts received by credit card processors not specifically addressed in subdivisions one through nine of this section deemed to be generated within the state shall be determined by multiplying the total amount of such other receipts by the average of (i) eight percent and (ii) the percent of its New York access points. The percent of New York access points is the number of locations in New York from which the credit card processor's customers access the credit card processor's network divided by the total number of locations in the United States where the credit card processor's customers access the credit card processor's network.

(d) Receipts from certain services to investment companies. Receipts received from an investment company arising from the sale of management, administration or distribution services to such investment company are included in the denominator of the apportionment fraction. The portion of such receipts included in the numerator of the apportionment fraction (such portion referred to herein as the New York portion) shall be determined as provided in this paragraph.

(1) The New York portion shall be the product of the total of such receipts from the sale of such services and a fraction. The numerator of that fraction is the sum of the monthly percentages (as defined herein-
after) determined for each month of the investment company's taxable year for federal income tax purposes which taxable year ends within the taxable year of the taxpayer (but excluding any month during which the investment company had no outstanding shares). The monthly percentage for each such month is determined by dividing the number of shares in the investment company that are owned on the last day of the month by shareholders that are located in the state by the total number of shares in the investment company outstanding on that date. The denominator of the fraction is the number of such monthly percentages.

(2)(A) For purposes of this paragraph, an individual, estate or trust is deemed to be located in the state if his, her or its mailing address on the records of the investment company is in the state. A business entity is deemed to be located in the state if its commercial domicile is located in the state.

(B) For purposes of this paragraph, the term "investment company" means a regulated investment company, as defined in section 851 of the internal revenue code, and a partnership to which section 7704(a) of the internal revenue code applies (by virtue of section 7704(c)(3) of such code) and that meets the requirements of section 851(b) of such code. The preceding sentence shall be applied to the taxable year for federal income tax purposes of the business entity that is asserted to constitute an investment company that ends within the taxable year of the taxpayer.

(C) For purposes of this paragraph the term "receipts from an investment company" includes amounts received directly from an investment company as well as amounts received from the shareholders in such investment company, in their capacity as such.

(D) For purposes of this paragraph, the term "management services" means the rendering of investment advice to an investment company, making determinations as to when sales and purchases of securities are to be made on behalf of an investment company, or the selling or purchasing of securities constituting assets of an investment company, and related activities, but only where such activity or activities are performed pursuant to a contract with the investment company entered into pursuant to section 15(a) of the federal investment company act of nineteen hundred forty, as amended.

(E) For purposes of this paragraph, the term "distribution services" means the services of advertising, servicing investor accounts (including redemptions), marketing shares or selling shares of an investment company, but, in the case of advertising, servicing investor accounts (including redemptions) or marketing shares, only where such service is performed by a person who is (or was, in the case of a closed end company) also engaged in the service of selling such shares. In the case of an open end company, such service of selling shares must be performed pursuant to a contract entered into pursuant to section 15(b) of the federal investment company act of nineteen hundred forty, as amended.

(F) For purposes of this paragraph, the term "administration services" includes clerical, accounting, bookkeeping, data processing, internal auditing, legal and tax services performed for an investment company but only if the provider of such service or services during the taxable year in which such service or services are sold also sells management or distribution services, as defined hereinabove, to such investment company.

(e) For purposes of this subdivision, a taxpayer shall use the following hierarchy to determine the commercial domicile of a business entity, based on the information known to the taxpayer or information that would be known upon reasonable inquiry: (i) the location of the treasury function of the business entity; (ii) the seat of management and control of the business entity; and (iii) the billing address of the business entity in the taxpayer’s records. The taxpayer must exercise due diligence before rejecting a method in this hierarchy and proceeding to the next
method.

(f) For purposes of this subdivision, the term "registered securities broker or dealer" means a broker or dealer registered as such by the securities and exchange commission or a broker or dealer registered as such by the commodities futures trading commission, and shall include an OTC derivatives dealer as defined under regulations of the securities and exchange commission at title 17, part 240, section 3b-12 of the code of federal regulations (17 CFR 240.3b-12).

6. Receipts from railroad and trucking business. Receipts from the conduct of a railroad business (including surface railroad, whether or not operated by steam, subway railroad, elevated railroad, palace car or sleeping car business) or a trucking business are included in the numerator of the apportionment fraction as follows. The amount of receipts from the conduct of a railroad business or a trucking business included in the numerator of the apportionment fraction is determined by multiplying the amount of receipts from such business by a fraction, the numerator of which is the miles in such business within the state during the period covered by the taxpayer's report and the denominator of which is the miles in such business within and without the state during such period. Receipts from the conduct of the railroad business or a trucking business are included in the denominator of the apportionment fraction.

7. Receipts from aviation services. (a) Air freight forwarding. Receipts of a taxpayer from the activity of air freight forwarding acting as principal and like indirect air carrier receipts arising from such activity shall be included in the numerator of the apportionment fraction as follows: one hundred percent of such receipts if both the pickup and delivery associated with such receipts are made in the state and fifty percent of such receipts if either the pickup or delivery associated with such receipts is made in this state. Such receipts, whether the pickup or delivery associated with the receipts is within or without the state, shall be included in the denominator of the apportionment fraction.

(b) Other aviation services. (1)(A) The portion of receipts of a taxpayer from aviation services (other than services described in paragraph (a) of this subdivision) to be included in the numerator of the apportionment fraction shall be determined by multiplying its receipts from such aviation services by a percentage which is equal to the arithmetic average of the following three percentages:

(i) the percentage determined by dividing sixty percent of the aircraft arrivals and departures within this state by the total aircraft arrivals and departures within and without this state during such period, provided, however, arrivals and departures solely for maintenance or repair, refueling (where no debarkation or embarkation of traffic occurs), arrivals and departures of ferry and personnel training flights or arrivals and departures in the event of emergency situations shall not be included in computing such arrival and departure percentage; provided, further, the commissioner may also exempt from such percentage aircraft arrivals and departures of all non-revenue flights including flights involving the transportation of officers or employees receiving air transportation to perform maintenance or repair services or where such officers or employees are transported in conjunction with an emergency situation or the investigation of an air disaster (other than on a scheduled flight); provided, however, that arrivals and departures of flights transporting officers and employees receiving air transportation for purposes other than specified above (without regard to remuneration) shall be included in computing such arrival and departure percentage;

(ii) the percentage determined by dividing sixty percent of the revenue tons handled by the taxpayer at airports within this state during such period by the total revenue tons handled by it at airports within...
and without this state during such period; and

(iii) the percentage determined by dividing sixty percent of the

taxpayer's originating revenue within this state for such period by its

total originating revenue within and without this state for such period.

(B) As used herein the term "aircraft arrivals and departures" means

the number of landings and takeoffs of the aircraft of the taxpayer and

the number of air pickups and deliveries by the aircraft of such taxpayer;

the term "originating revenue" means revenue to the taxpayer from

the transportation or revenue passengers and revenue property first

received by the taxpayer either as originating or connecting traffic at

airports; and the term "revenue tons handled" by the taxpayer at


8. Receipts from sales of advertising. (a) The amount of receipts from

sales of advertising in newspapers or periodicals included in the numer-

ator of the apportionment fraction is determined by multiplying the

total of such receipts by a fraction, the numerator of which is the

number of newspapers and periodicals delivered to points within the

state and the denominator of which is the number of newspapers and peri-

odicals delivered to points within and without the state. The total of

such receipts from sales of advertising in newspapers or periodicals is

included in the denominator of the apportionment fraction.

(b) The amount of receipts from sales of advertising on television or

radio included in the apportionment fraction is determined by multiply-

ing the total of such receipts by a fraction, the numerator of which is

the number of viewers or listeners within the state and the denominator

of which is the number of viewers or listeners within and without the

state. The total of such receipts from sales of advertising on tele-

vision and radio is included in the denominator of the apportionment

fraction.

(c) The amount of receipts from sales of advertising not described in

paragraph (a) or (b) of this subdivision that is furnished, provided or
delivered to, or accessed by the viewer or listener through the use of
wire, cable, fiber-optic, laser, microwave, radio wave, satellite or
similar successor media or any combination thereof, included in the
numerator of the apportionment fraction is determined by multiplying the

total of such receipts by a fraction, the numerator of which is the

number of viewers or listeners within the state and the denominator

of which is the number of viewers or listeners within and without the

state. The total of such receipts from sales of advertising described in

this paragraph is included in the denominator of the apportionment fra-

ction.

9. Receipts from transportation or transmission of gas through pipes.

Receipts from the transportation or transmission of gas through pipes

are included in the numerator of the apportionment fraction as follows.

The amount of receipts from the transportation or transmission of gas

through pipes included in the numerator of the apportionment fraction is
determined by multiplying the total amount of such receipts by a frac-
tion, the numerator of which is the taxpayer's transportation units

within the state and the denominator of which is the taxpayer's trans-

portation units within and without the state. A transportation unit is

the transportation of one cubic foot of gas over a distance of one mile.
The total amount of receipts from the transportation or transmission of
gas through pipes is included in the denominator of the apportionment

fraction.

10. (a) Receipts from other services and other business receipts.
Receipts from services not addressed in subdivisions one through nine of this section and other business receipts not addressed in such subdivisions shall be included in the numerator of the apportionment fraction if the location of the customer is within the state. Such receipts from customers within and without the state are included in the denominator of the apportionment fraction. Whether the receipts are included in the numerator of the apportionment fraction is determined according to the hierarchy of method set forth in paragraph (b) of this subdivision. The taxpayer must exercise due diligence under each method described in such paragraph (b) before rejecting it and proceeding to the next method in the hierarchy, and must base its determination on information known to the taxpayer or information that would be known to the taxpayer upon reasonable inquiry.

(b) Hierarchy of methods. (1) The benefit is received in this state;
(2) Delivery destination;
(3) The apportionment fraction for such receipts within the state determined pursuant to this subdivision for the preceding taxable year; or
(4) The apportionment fraction in the current taxable year determined pursuant to this subdivision for those receipts that can be sourced using the hierarchy of sourcing methods in subparagraphs one and two of this paragraph.

11. If it shall appear that the apportionment fraction determined pursuant to this section does not result in a proper reflection of the taxpayer's business income or capital within the state, the commissioner is authorized in his or her discretion to adjust it, or the taxpayer may request that the commissioner adjust it, by (a) excluding one or more items in such determination, (b) including one or more other items in such determination, or (c) any other similar or different method calculated to effect a fair and proper apportionment of the business income and capital reasonably attributed to the state. The party seeking the adjustment shall bear the burden of proof to demonstrate that the apportionment fraction determined pursuant to this section does not result in a proper reflection of the taxpayer's business income or capital within the state and that the proposed adjustment is appropriate.

§ 17. The tax law is amended by adding a new section 210-B to read as follows:

§ 210-B. Credits. 1. Investment tax credit (ITC). (a) A taxpayer shall be allowed a credit, to be computed as hereinafter provided, against the tax imposed by this article. The amount of the credit shall be the percent provided for hereinbelow of the investment credit base. The investment credit base is the cost or other basis for federal income tax purposes of tangible personal property and other tangible property, including buildings and structural components of buildings, described in paragraph (b) of this subdivision, less the amount of the nonqualified nonrecourse financing with respect to such property to the extent such financing would be excludible from the credit base pursuant to section 46(c)(8) of the internal revenue code (treating such property as section thirty-eight property irrespective of whether or not it in fact constitutes section thirty-eight property). If, at the close of a taxable year following the taxable year in which such property was placed in service, there is a net decrease in the amount of nonqualified nonrecourse financing with respect to such property, such net decrease shall be treated as if it were the cost or other basis of property described in paragraph (b) of this subdivision acquired, constructed, reconstructed or erected during the year of the decrease in the amount of nonqualified nonrecourse financing. In the case of a combined report the term investment credit base shall mean the sum of the investment credit base of each corporation included on such report. The percentage to be used to compute the credit allowed pursuant to this subdivision shall be five percent with respect to the first three hundred fifty million dollars of
the investment credit base, and four percent with respect to the invest-
ment credit base in excess of three hundred fifty million dollars,
except that in the case of research and development property at the
option of the taxpayer the applicable percentage shall be nine.

(b) (i) A credit shall be allowed under this subdivision with respect
to tangible personal property and other tangible property, including
buildings and structural components of buildings, which are: depreciable
pursuant to section one hundred sixty-seven of the internal revenue
code, have a useful life of four years or more, are acquired by purchase
as defined in section one hundred seventy-nine (d) of the internal
revenue code, have a situs in this state and are (A) principally used by
the taxpayer in the production of goods by manufacturing, processing,
assembling, refining, mining, extracting, farming, agriculture, horti-
culture, floriculture, viticulture or commercial fishing, (B) industrial
waste treatment facilities or air pollution control facilities, used in
the taxpayer's trade or business, (C) research and development property,
or (D) principally used in the ordinary course of the taxpayer's trade
or business as a broker or dealer in connection with the purchase or
sale (which shall include but not be limited to the issuance, entering
into, assumption, offset, assignment, termination, or transfer) of
stocks, bonds or other securities as defined in section four hundred
seventy-five (c)(2) of the Internal Revenue Code, or of commodities as
defined in section four hundred seventy-five (e) of the Internal Revenue
Code, (E) principally used in the ordinary course of the taxpayer's
trade or business of providing investment advisory services for a regu-
lated investment company as defined in section eight hundred fifty-one
of the Internal Revenue Code, or lending, loan arrangement or loan orig-
ination services to customers in connection with the purchase or sale
(which shall include but not be limited to the issuance, entering into,
ascription into, offset, assignment, termination, or transfer) of securities
as defined in section four hundred seventy-five (c)(2) of the Internal
Revenue Code, (F) originally used in the ordinary course of the taxpay-
er's business as an exchange registered as a national securities
exchange within the meaning of sections 3(a)(1) and 6(a) of the Securi-
ties Exchange Act of 1934 or a board of trade as defined in section
1410(a)(1) of the New York Not-for-Profit Corporation Law or as an enti-
yty that is wholly owned by one or more such national securities
exchanges or boards of trade and that provides automation or technical
services thereto, or (G) principally used as a qualified film production
facility including qualified film production facilities having a situs
in an empire zone designated as such pursuant to article eighteen-B of
the general municipal law, where the taxpayer is providing three or more
services to any qualified film production company using the facility,
including such services as a studio lighting grid, lighting and grip
equipment, multi-line phone service, broadband information technology
access, industrial scale electrical capacity, food services, security
services, and heating, ventilation and air conditioning. Provided,
however, a taxpayer shall not be allowed the credit provided by clauses
(D), (E) and (F) of this subparagraph unless (i) eighty percent or more
of the employees performing the administrative and support functions
resulting from or related to the qualifying uses of such equipment are
located in this state or (ii) the average number of employees that
perform the administrative and support functions resulting from or
related to the qualifying uses of such equipment and are located in this
state during the taxable year for which the credit is claimed is equal
to or greater than ninety-five percent of the average number of employ-
ees that perform these functions and are located in this state during
the thirty-six months immediately preceding the year for which the cred-
it is claimed, or (iii) the number of employees located in this state

S. 6359--D 74 A. 8559--D
during the taxable year for which the credit is claimed is equal to or greater than ninety percent of the number of employees located in this state on December thirty-first, nineteen hundred ninety-eight or, if the taxpayer was not a calendar year taxpayer in nineteen hundred ninety-eight, the last day of its first taxable year ending after December thirty-first, nineteen hundred ninety-eight. If the taxpayer becomes subject to tax in this state after the taxable year beginning in nineteen hundred ninety-eight, then the taxpayer is not required to satisfy the employment test provided in the preceding sentence of this subparagraph for its first taxable year. For purposes of clause (iii) of this subparagraph the employment test will be based on the number of employees located in this state on the last day of the first taxable year the taxpayer is subject to tax in this state. If the uses of the property must be aggregated to determine whether the property is principally used in qualifying uses, then either each affiliate using the property must satisfy this employment test or this employment test must be satisfied through the aggregation of the employees of the taxpayer, its affiliated regulated broker, dealer, and registered investment adviser using the property. For purposes of this subdivision, the term "goods" shall not include electricity.

(ii) For purposes of this paragraph, the following definitions shall apply--

(A) Manufacturing shall mean the process of working raw materials into wares suitable for use or which gives new shapes, new quality or new combinations to matter which already has gone through some artificial process by the use of machinery, tools, appliances and other similar equipment. Property used in the production of goods shall include machinery, equipment or other tangible property which is principally used in the repair and service of other machinery, equipment or other tangible property used principally in the production of goods and shall include all facilities used in the production operation, including storage of material to be used in production and of the products that are produced.

(B) Research and development property shall mean property which is used for purposes of research and development in the experimental or laboratory sense. Such purposes shall not be deemed to include the ordinary testing or inspection of materials or products for quality control, efficiency surveys, management studies, consumer surveys, advertising, promotions, or research in connection with literary, historical or similar projects.

(C) Industrial waste treatment facilities shall mean property constituting facilities for the treatment, neutralization or stabilization of industrial waste and other wastes (as the terms "industrial waste" and "other wastes" are defined in section 17-0105 of the environmental conservation law) from a point immediately preceding the point of such treatment, neutralization or stabilization to the point of disposal, including the necessary pumping and transmitting facilities, but excluding such facilities installed for the primary purpose of salvaging materials which are usable in the manufacturing process or are marketable.

(D) Air pollution control facilities shall mean property constituting facilities which remove, reduce, or render less noxious air contaminants emitted from an air contamination source (as the terms "air contaminant" and "air contamination source" are defined in section 19-0107 of the environmental conservation law) from a point immediately preceding the point of such removal, reduction or rendering to the point of discharge of air, meeting emission standards as established by the department of environmental conservation, but excluding such facilities installed for the primary purpose of salvaging materials which are usable in the manufacturing process or are marketable and excluding those facilities which rely for their efficacy on dilution, dispersion or assimilation of air contaminants in the ambient air after emission. Such term shall further
include flue gas desulfurization equipment and attendant sludge disposal facilities, fluidized bed boilers, precombustion coal cleaning facilities or other facilities that conform with this subdivision and which comply with the provisions of the state acid deposition control act set forth in title nine of article nineteen of the environmental conservation law.

(E) The terms "qualified film production facility" and "qualified film production company" shall have the same meaning as in section twenty-four of this chapter.

(iii) However, such credit shall be allowed with respect to industrial waste treatment facilities and air pollution control facilities only on condition that such facilities have been certified by the state commissioner of environmental conservation or his designated representative, pursuant to subdivision one of section 17-0707 or subdivision one of section 19-0309 of the environmental conservation law, as complying with applicable provisions of the environmental conservation law, the public health law, the state sanitary code and codes, rules, regulations, permits or orders issued pursuant thereto.

(c) A taxpayer shall not be allowed a credit under this subdivision with respect to tangible personal property and other tangible property, including buildings and structural components of buildings, which it leases to any other person or corporation except where a taxpayer leases property to an affiliated regulated broker, dealer, registered investment adviser, national securities exchange or board of trade (or other entity described in clause (F) of subparagraph (i) of paragraph (b) of this subdivision) that uses such property in accordance with clause (D), (E) or (F) of subparagraph (i) of paragraph (b) of this subdivision. For purposes of the preceding sentence, any contract or agreement to lease or rent or for a license to use such property shall be considered a lease. Provided, however, in determining whether a taxpayer shall be allowed a credit under this subdivision with respect to such property, any election made with respect to such property pursuant to the provisions of paragraph eight of subsection (f) of section one hundred sixty-eight of the internal revenue code, as such paragraph was in effect for agreements entered into prior to January first, nineteen hundred eighty-four, shall be disregarded. For purposes of this paragraph, the use of a qualified film production facility by a qualified film production company shall not be considered a lease of such facility to such company.

(d) Except as otherwise provided in this paragraph, the credit allowed under this subdivision for any taxable year shall not reduce the tax due for such year to less than the higher of the amounts prescribed in paragraphs (c) and (d) of subdivision one of this section. However, if the amount of credit allowed under this subdivision for any taxable year reduces the tax to such amount, any amount of credit allowed for a taxable year commencing prior to January first, nineteen hundred eighty-seven and not deductible in such taxable year may be carried over to the following year or years and may be deducted from the taxpayer's tax for such year or years but in no event shall such credit be carried over to taxable years commencing on or after January first, two thousand two, and any amount of credit allowed for a taxable year commencing on or after January first, nineteen hundred eighty-seven and not deductible in such year may be carried over to the fifteen taxable years next following such taxable year and may be deducted from the taxpayer's tax for such year or years. In lieu of such carryover, any such taxpayer which qualifies as a new business under paragraph (j) of this subdivision may elect to treat the amount of such carryover as an overpayment of tax to be credited or refunded in accordance with the provisions of section ten hundred eighty-six of this chapter, provided, however, the provisions of subsection (c) of section ten hundred eighty-eight of this chapter notwithstanding, no interest shall be paid thereon.
(e) (1) With respect to property which is depreciable pursuant to section one hundred sixty-seven of the internal revenue code but is not subject to the provisions of section one hundred sixty-eight of such code and which is disposed of or ceases to be in qualified use prior to the end of the taxable year in which the credit is to be taken, the amount of the credit shall be that portion of the credit provided for in this subdivision which represents the ratio which the months of qualified use bear to the months of qualified use prior to the end of the taxable year in which the credit is to be taken, the amount of credit allowed for actual use shall be determined by multiplying the original credit by the ratio which the months of qualified use bear to thirty-six. If property on which credit has been taken is disposed of or ceases to be in qualified use prior to the end of thirty-six months, the difference between the credit taken and the credit allowed for actual use must be added back in the year of disposition. Provided, however, if such property is disposed of or ceases to be in qualified use after it has been in qualified use for more than twelve consecutive years, it shall not be necessary to add back the credit as provided in this subparagraph. The amount of credit allowed for actual use shall be determined by multiplying the original credit by the ratio which the months of qualified use bear to thirty-six.

(2) Except with respect to that property to which subparagraph four of subsection (e) of section one hundred sixty-eight of the internal revenue code applies, with respect to three-year property, as defined in section one hundred sixty-nine of such section one hundred sixty-eight, which is disposed of or ceases to be in qualified use prior to the end of the taxable year in which the credit is to be taken, the amount of the credit shall be that portion of the credit provided for in this subdivision which represents the ratio which the months of qualified use bear to thirty-six. If property on which credit has been taken is disposed of or ceases to be in qualified use prior to the end of thirty-six months, the difference between the credit taken and the credit allowed for actual use must be added back in the year of disposition. The amount of credit allowed for actual use shall be determined by multiplying the original credit by the ratio which the months of qualified use bear to thirty-six.

(3) Except with respect to that property to which subparagraph four of this paragraph applies, with respect to property subject to the provisions of section one hundred sixty-eight of the internal revenue code, other than three-year property as defined in section one hundred sixty-nine of such section one hundred sixty-eight which is disposed of or ceases to be in qualified use prior to the end of the taxable year in which the credit is to be taken, the amount of the credit shall be that portion of the credit provided for in this subdivision which represents the ratio which the months of qualified use bear to sixty. If property on which credit has been taken is disposed of or ceases to be in qualified use prior to the end of sixty months, the difference between the credit taken and the credit allowed for actual use must be added back in the year of disposition. The amount of credit allowed for actual use shall be determined by multiplying the original credit by the ratio which the months of qualified use bear to sixty.

(4) With respect to any property to which section one hundred sixty-eight of the internal revenue code applies, which is a building or a structural component of a building and which is disposed of or ceases to be in qualified use prior to the end of the taxable year in which the credit is to be taken, the amount of the credit shall be that portion of the credit provided for in this subdivision which represents the ratio which the months of qualified use bear to the total number of months over which the taxpayer chooses to deduct the property under the internal revenue code. If property on which credit has been taken is disposed of or ceases to be in qualified use prior to the end of the period over which the taxpayer chooses to deduct the property under the internal revenue code, the difference between the credit taken and the credit
allowed for actual use must be added back in the year of disposition. Provided, however, if such property is disposed of or ceases to be in qualified use after it has been in qualified use for more than twelve consecutive years, it shall not be necessary to add back the credit as provided in this subparagraph. The amount of credit allowed for actual use shall be determined by multiplying the original credit by the ratio which the months of qualified use bear to the total number of months over which the taxpayer chooses to deduct the property under the internal revenue code.

(5) For purposes of this paragraph, property (i) which is described in subparagraph two, three or four of this paragraph, and (ii) which is subject to subparagraph eleven of paragraph (a) of subdivision nine and subparagraph ten of paragraph (b) of subdivision nine of section two hundred eight of this chapter, shall be treated as property which is depreciable pursuant to section one hundred sixty-seven of the internal revenue code but is not subject to section one hundred sixty-eight of such code.

(6) For purposes of this paragraph, where a credit is allowed with respect to an air pollution control facility on the basis of a certificate of compliance issued pursuant to the environmental conservation law and the certificate is revoked pursuant to subdivision three of section 19-0309 of the environmental conservation law, such revocation shall constitute a disposal or cessation of qualified use, unless such facility is described in clause (A) or (C) of subparagraph (ii) of paragraph (b) of this subdivision. Also for purposes of this subparagraph, the use of an air pollution control facility or an industrial waste treatment facility for the primary purpose of salvaging materials which are usable in the manufacturing process or are marketable shall constitute a cessation of qualified use, unless such facility is described in clause (A) or (C) of subparagraph (ii) of paragraph (b) of this subdivision.

(7) For taxable years commencing on or after January first, nineteen hundred eighty-seven, the amount required to be added back pursuant to this paragraph shall be augmented by an amount equal to the product of such amount and the underpayment rate of interest (without regard to compounding), set by the commissioner of taxation and finance pursuant to subsection (e) of section one thousand ninety-six, in effect on the last day of the taxable year.

(8) If, as of the close of the taxable year, there is a net increase with respect to the taxpayer in the amount of nonqualified nonrecourse financing (within the meaning of section 46(c) (8) of the internal revenue code) with respect to any property with respect to which the credit under this subdivision was limited based on attributable nonqualified nonrecourse financing, then an amount equal to the decrease in such credit which would have resulted from reducing, by the amount of such net increase, the cost or other basis taken into account with respect to such property must be added back in such taxable year. The amount of nonqualified nonrecourse financing shall not be treated as increased by reason of a transfer of (or agreement to transfer) any evidence of an indebtedness if such transfer occurs (or such agreement is entered into) more than one year after the date such indebtedness was incurred.

(9) (A) Where property with respect to which credit has been allowed under this subdivision is disposed of by transfer to the taxpayer in a qualified transaction, and such disposition requires, pursuant to this paragraph (without regard to this subparagraph) that such credit be decreased (where the disposition occurs in the taxable year in which the property is placed in service by the transferor) or that a portion of such credit be added back by the transferor, then clause (B) or clause (C) of this subparagraph shall apply.

(B) If the taxpayer and the transferor jointly elect, at such time and
in such manner as the commissioner may prescribe, the following shall apply:
  (i) such portion shall not be required to be added back by the transferor,
  (ii) the amount of unused credit shall not be deducted from tax otherwise due by the transferor on any return (including an amended return), and shall not be so deducted as part of any audit adjustment or any other determination, and
  (iii) the amount of unused credit shall be treated as an amount of credit of the taxpayer under this subdivision carried forward by the taxpayer to its taxable year in which such transfer occurred, as if the credit allowed to the transferor with respect to such property had originally been allowed to the taxpayer both as to amount and first date of qualified use, and as if the period of qualified use by the transferor prior to the transfer had been a period of such use by the taxpayer. Any amount of credit treated as carried forward to the taxable year pursuant to this subparagraph shall be applied as provided in clause (H) of this subparagraph.

(C) If the taxpayer and the transferor do not make the election described in clause (B) of this subparagraph, then the amount of credit required pursuant to this paragraph to be added back by the transferor shall be treated as an amount of credit of the taxpayer under this subdivision to be carried forward to the taxable year pursuant to this subparagraph shall be applied as provided in clause (H) of this subparagraph.

(D) The term "qualified transaction" shall mean a transaction which is a reorganization described in section 368(a)(1)(D) of the internal revenue code, wherein (i) substantially all of the assets of the transferor necessary to continue the operation of a division or divisions of the transferor are transferred to the taxpayer in a transaction to which section 351 of such code applies, and (ii) stock or securities of the taxpayer held by the transferor are distributed pursuant to section 355 of such code.

(E) The term "unused credit" shall mean the amount of credit shown as carried forward to the transaction year on the transferor’s tax return for its taxable year immediately preceding the transaction year with respect to the property described in clause (A) of this subparagraph.

(F) The term "transaction year" means the taxable year in which the qualified transaction occurs.

(G) Notwithstanding any other provision of law to the contrary, in the case of allowance of credit pursuant to this subparagraph to a taxpayer, the commissioner shall have the authority to reveal to the taxpayer any information, with respect to the credit of the transferor, which is the basis for the denial in whole or in part of the credit claimed by such taxpayer.

(H) Where a credit is allowed to a taxpayer pursuant to this subparagraph, the taxpayer may treat the amount of such credit as an overpayment of tax to be credited or refunded in accordance with the provisions of section ten hundred eighty-six of this chapter, provided, however, the provisions of subsection (c) of section ten hundred eighty-eight of this chapter notwithstanding, no interest shall be paid thereon. Such credit shall be allowed against the tax imposed by this article with respect to the second succeeding taxable year next following the transaction year, provided that not more than one-fourth of the amount of such credit may be applied by the taxpayer, whether to reduce tax otherwise due or to be treated as an overpayment to be credited or refunded,
with respect to such second succeeding taxable year and each of the next three taxable years following such second succeeding taxable year.

(f) For purposes of paragraph (d) of this subdivision, a new business shall include any corporation, except a corporation which:

(1) over fifty percent of the number of shares of stock entitling the holders thereof to vote for the election of directors or trustees is owned or controlled, either directly or indirectly, by a taxpayer subject to tax under this article; section one hundred eighty-three, one hundred eighty-four or one hundred eighty-five of article nine; or article thirty-three of this chapter; or

(2) is substantially similar in operation and in ownership to a business entity (or entities) taxable, or previously taxable, under this article; section one hundred eighty-three, one hundred eighty-four, former section one hundred eighty-five or former section one hundred eighty-six of article nine; article twenty-three of this chapter as such article was in effect on December thirty-first, two thousand fourteen; article thirty-three of this chapter; article twenty-three of this chapter or which would have been subject to tax under such article twenty-three (as such article was in effect on January first, nineteen hundred eighty) or the income (or losses) of which is (or was) includable under article twenty-two of this chapter whereby the intent and purpose of this paragraph and paragraph (d) of this subdivision with respect to refunding of credit to new business would be evaded; or

(3) has been subject to tax under this article or former article thirty-two of this chapter for more than five taxable years (excluding short taxable years).

2. Employment Incentive Credit (EIC). (a)(i) Application of credit. Where a taxpayer is allowed a credit under subdivision one of this section, other than at the optional rate applicable to research and development property, the taxpayer shall be allowed a credit for each of the two years next succeeding the taxable year for which the credit under such subdivision one is allowed with respect to such property, whether or not deductible in such taxable year or in subsequent taxable years pursuant to paragraph (d) of such subdivision one. Provided, however, that the credit allowable under this subdivision for any taxable year shall be allowed only if the average number of employees during such taxable year is at least one hundred one percent of the average number of employees during the employment base year. The employment base year shall be the taxable year immediately preceding the taxable year for which the credit under such subdivision one is allowed except that if the taxpayer was not subject to tax and did not have a taxable year immediately preceding the taxable year for which the credit under such subdivision one of this section is allowed, the employment base year shall be the taxable year in which the credit under such subdivision one is allowed.

(ii) Amount of credit. The amount of the credit allowed under this subdivision shall be as set forth in the following table:

<table>
<thead>
<tr>
<th>Average number of employees during the taxable year expressed as a percentage of average employees in employment base years</th>
<th>Credit allowed under this subdivision expressed as a percentage of the applicable investment credit basis</th>
</tr>
</thead>
<tbody>
<tr>
<td>Less than 102%</td>
<td>1.5%</td>
</tr>
<tr>
<td>At least 102% and less than 103%</td>
<td>2%</td>
</tr>
<tr>
<td>At least 103%</td>
<td>2.5%</td>
</tr>
</tbody>
</table>

(b) Average number of employees. The average number of employees in a taxable year shall be computed by ascertaining the number of employees within the state, except general executive officers, employed by the taxpayer on the thirty-first day of March, the thirtieth day of June, the thirtieth day of September and the thirty-first day of December in each of such taxable years, by adding together the number of employees ascertained on each of such dates and dividing the sum so obtained by the number of
such above mentioned dates occurring within the taxable year. However, with respect to the employment base year, there shall be excluded therefrom any employee with respect to whom a credit provided for under subdivision six of this section is claimed, for the taxable year, based on employment within a zone equivalent area designated as such pursuant to article eighteen-B of the general municipal law.

(c) Carryover. In no event shall the credit herein provided for be allowed in an amount which will reduce the tax payable to less than the fixed dollar minimum amount prescribed in paragraph (d) of subdivision one of section two hundred ten of this article. However, if the amount of credit allowable under this subdivision for any taxable year reduces the tax to such amount or if the taxpayer otherwise pays tax based on the fixed dollar minimum amount, any amount of credit not deductible in such taxable year may be carried over to the fifteen taxable years immediately following such taxable year and may be deducted from the taxpayer's tax for such year or years.

3. Empire zone investment tax credit (EZ-ITC). (a) A taxpayer shall be allowed a credit, to be computed as herein provided, against the tax imposed by this article if the taxpayer has been certified pursuant to article eighteen-B of the general municipal law. The amount of the credit shall be ten percent of the cost or other basis for federal income tax purposes of tangible personal property and other tangible property, including buildings and structural components of buildings, described in paragraph (b) of this subdivision, which is located within an empire zone designated as such pursuant to article eighteen-B of such law, but only if the acquisition, construction, reconstruction or erection of such property occurred or was commenced on or after the date of such designation and prior to the expiration thereof. Provided, however, that in the case of an acquisition, construction, reconstruction or erection which was commenced during such period and continued or completed subsequently, such credit shall be ten percent of the portion of the cost or other basis for federal income tax purposes attributable to such period, which portion shall be ascertained by multiplying such cost or basis by a fraction the numerator of which shall be the expenditures paid or incurred during such period for such purposes and the denominator of which shall be the total of all expenditures paid or incurred for such acquisition, construction, reconstruction or erection.

(b) Qualified property. A credit shall be allowed under this subdivision with respect to tangible personal property and other tangible property, including buildings and structural components of buildings, which (i) have a useful life of four years or more, (ii) are acquired by purchase as defined in section one hundred seventy-nine (d) of the internal revenue code, (iv) have a situs in an empire zone designated as such pursuant to article eighteen-B of the general municipal law, and (v) are (A) principally used by the taxpayer in the production of goods by manufacturing, processing, assembling, refining, mining, extracting, farming, agriculture, horticulture, floriculture, viticulture or commercial fishing, (B) industrial waste treatment facilities or air pollution control facilities used in the taxpayer's trade or business, (C) research and development property, (D) principally used in the ordinary course of the taxpayer's trade or business as a broker or dealer in connection with the purchase or sale (which shall include but not be limited to the issuance, entering into, assumption, offset, assignment, termination, or transfer) of stocks, bonds or other securities as defined in section four hundred seventy-five (c)(2) of the Internal Revenue Code, or of commodities as defined in section four hundred seventy-five (e) of the Internal Revenue Code,
(E) principally used in the ordinary course of the taxpayer's trade or business of providing investment advisory services for a regulated investment company as defined in section eight hundred fifty-one of the Internal Revenue Code, or lending, loan arrangement, or loan origination services to customers in connection with the purchase or sale (which shall include but not be limited to the issuance, entering into, assumption, offset, assignment, termination or transfer) of securities as defined in section four hundred seventy-five (c)(2) of the Internal Revenue Code,

(E-1) principally used in the ordinary course of the taxpayer's trade or business of providing investment advisory services or the service of managing investment portfolios to achieve specific investment objectives for accounts over one million dollars of accredited investors (as that term is defined in rule 501 of regulation D of the Securities Act of 1933), if the taxpayer satisfies the following criteria:

(I) the taxpayer is a regulated broker or dealer or an affiliate of a regulated broker or dealer,

S. 6359--D 82 A. 8559--D

(II) the taxpayer is registered as an investment adviser under section two hundred three of the Investment Advisers Act of 1940, as amended, and

(III) at least one client of the taxpayer is a regulated investment company as defined in section eight hundred fifty-one of the Internal Revenue Code that has assets of one hundred million dollars, or

(F) principally used in the ordinary course of the taxpayer's business as an exchange registered as a national securities exchange within the meaning of sections 3(a)(1) and 6(a) of the Securities Exchange Act of 1934 or a board of trade as defined in subdivision one of paragraph (a) of section fourteen hundred ten of the not-for-profit corporation law or as an entity that is wholly owned by one or more such national securities exchanges or boards or trade and that provides automation or technical services thereto.

(vi) For purposes of clauses (D), (E), (E-1) and (F) of subparagraph (v) of this paragraph, property purchased by a taxpayer affiliated with a regulated broker, dealer, registered investment adviser, national securities exchange or board of trade is allowed a credit under this subdivision if the property is used by its affiliated regulated broker, dealer, registered investment adviser or national securities exchange or board of trade in accordance with this subdivision. For purposes of determining if the property is principally used in qualifying uses, the uses by the taxpayer described in clauses (D), (E) and (E-1) of subparagraph (v) of this paragraph may be aggregated. In addition, the uses by the taxpayer, its affiliated regulated broker, dealer and registered investment adviser under any of those clauses may be aggregated. Provided, however, a taxpayer shall not be allowed the credit provided by clauses (D), (E), (E-1) and (F) of subparagraph (v) of this paragraph unless

(I) eighty percent or more of the employees performing the administrative and support functions resulting from or related to the qualifying uses of such equipment are located in this state, or

(II) the average number of employees that perform the administrative and support functions resulting from or related to the qualifying uses of such equipment and are located in this state during the taxable year for which the credit is claimed is equal to or greater than ninety-five percent of the average number of employees that perform these functions and are located in this state during the thirty-six months immediately preceding the year for which the credit is claimed, or

(III) the number of employees located in this state during the taxable year for which the credit is claimed is equal to or greater than ninety percent of the number of employees located in this state on December thirty-first, nineteen hundred ninety-eight or, if the taxpayer was not a calendar year taxpayer in nineteen hundred ninety-eight, the last day

of its first taxable year ending after December thirty-first, nineteen hundred ninety-eight. If the taxpayer becomes subject to tax in this state after the taxable year beginning in nineteen hundred ninety-eight, then the taxpayer is not required to satisfy the employment test provided in the preceding sentence of this subparagraph for its first taxable year.

(vii) For the purposes of clause (III) of subparagraph (vi) of this paragraph the employment test will be based on the number of employees located in this state on the last day of the first taxable year the taxpayer is subject to tax in this state. If the uses of the property must be aggregated to determine whether the property is principally used in qualifying uses, then either each affiliate using the property must satisfy this employment test or this employment test must be satisfied through the aggregation of the employees of the taxpayer, its affiliated regulated broker, dealer, and registered investment adviser using the property.

(viii) For the purpose of this subdivision, the term "goods" shall not include electricity.

(ix) For purposes of this subdivision, "manufacturing" shall mean the process of working raw materials into wares suitable for use or which gives new shapes, new quality or new combinations to matter which already has gone through some artificial process by the use of machinery, tools, appliances and other similar equipment. Property used in the production of goods shall include machinery, equipment or other tangible property which is principally used in the repair and service of other machinery, equipment or other tangible property used principally in the production of goods and shall include all facilities used in the production operation, including storage of material to be used in production and of the products that are produced. For purposes of this subdivision, the terms "research and development property", "industrial waste treatment facilities", and "air pollution control facilities" shall have the meanings ascribed thereto by clauses (B), (C) and (D), respectively, of subparagraph (iv) of paragraph (b) of subdivision one of this section, and the provisions of subparagraph (v) of such paragraph (b) shall apply.

(c) Nonqualified property. A taxpayer shall not be allowed a credit under this subdivision with respect to any tangible personal property and other tangible property, including buildings and structural components of buildings, which it leases to any other person or corporation except where a taxpayer leases property to an affiliated regulated broker, dealer, registered investment adviser, national securities exchange or board of trade or other entity described in clause (F) of subparagraph (v) of paragraph (b) of this subdivision that uses such property in accordance with clause (D), (E), (E-1) or (F) of subparagraph (v) of paragraph (b) of this subdivision. For purposes of the preceding sentence, any contract or agreement to lease or rent or for a license to use such property shall be considered a lease. Provided, however, in determining whether a taxpayer shall be allowed a credit under this subdivision with respect to such property, any election made with respect to such property pursuant to the provisions of paragraph eight of subsection (f) of section one hundred sixty-eight of the internal revenue code, as such paragraph was in effect for agreements entered into prior to January first, nineteen hundred eighty-four, shall be disregarded.

(d) Carryover. The credit allowed under this subdivision for any taxable year shall not reduce the tax due for such year to less than the fixed dollar minimum amount prescribed in paragraph (d) of subdivision one of section two hundred ten of this article. Provided, however, that if the amount of credit allowed under this subdivision for any taxable year reduces the tax to such amount or if the taxpayer otherwise pays tax based on the fixed dollar minimum amount, any amount of credit not
deductible in such taxable year may be carried over to the following year or years and may be deducted from the taxpayer’s tax for such year or years. In lieu of such carryover, any such taxpayer which qualifies as a new business under paragraph (f) of subdivision one of this section may elect, on its report for its taxable year with respect to which such credit is allowed, to treat fifty percent of the amount of such carryover as an overpayment of tax to be credited or refunded in accordance with the provisions of section one thousand eighty-six of this chapter.

In addition, any taxpayer which is approved as the owner of a qualified investment project or a significant capital investment project pursuant to subdivision (w) of section nine hundred fifty-nine of the general municipal law, on its report for its taxable year with respect to which such credit is allowed, in lieu of such carryover, may elect to treat fifty percent of the amount of such carryover which is attributable to the credit allowed under this subdivision for property which is part of such project as an overpayment of tax to be credited or refunded in accordance with the provisions of section one thousand eighty-six of this chapter. Provided, however, such owner shall be allowed such refund for a maximum of ten taxable years with respect to such qualified investment project and each significant capital investment project, starting with the first taxable year in which property comprising such project is placed in service. Provided, further, however, the provisions of subsection (c) of section one thousand eighty-eight of this chapter notwithstanding, no interest shall be paid thereon.

(d-1) Any carryover of a credit from prior taxable years will not be allowed if an empire zone retention certificate is not issued pursuant to subdivision (w) of section nine hundred fifty-nine of the general municipal law to the empire zone enterprise which is the basis of the credit.

(e) At the option of the taxpayer, the taxpayer may choose to claim the credit described in paragraph (a) of this subdivision for property which also qualifies for the credit provided under subdivision one of this section. A taxpayer shall not be allowed a credit under this subdivision with respect to any property described in paragraph (a) of this subdivision if a credit is taken pursuant to subdivision one of this section.

(f) Recapture. (i) With respect to property which is depreciable pursuant to section one hundred sixty-seven of the internal revenue code but is not subject to the provisions of section one hundred sixty-eight of such code and which is disposed of or ceases to be in qualified use prior to the end of the taxable year in which the credit is to be taken, the amount of the credit shall be that portion of the credit provided for in this subdivision which represents the ratio which the months of qualified use bear to the months of useful life. If property on which credit has been taken is disposed of or ceases to be in qualified use prior to the end of its useful life, the difference between the credit taken and the credit allowed for actual use must be added back in the year of disposition. Provided, however, if such property is disposed of or ceases to be in qualified use after it has been in qualified use for more than twelve consecutive years, it shall not be necessary to add back the credit as provided in this subparagraph. The amount of credit allowed for actual use shall be determined by multiplying the original credit by the ratio which the months of qualified use bear to the months of useful life. For purposes of this subparagraph, useful life of property shall be the same as the taxpayer uses for depreciation purposes when computing his federal income tax liability.

(ii) Except with respect to that property to which subparagraph (iv) of this paragraph applies, with respect to three-year property, as defined in subsection (e) of section one hundred sixty-eight of the internal revenue code, which is disposed of or ceases to be in qualified use prior to the end of the taxable year in which the credit is to be
taken, the amount of the credit shall be that portion of the credit provided for in this subdivision which represents the ratio which the months of qualified use bear to thirty-six. If property on which credit has been taken is disposed of or ceases to be in qualified use prior to the end of thirty-six months, the difference between the credit taken and the credit allowed for actual use must be added back in the year of disposition. The amount of credit allowed for actual use shall be determined by multiplying the original credit by the ratio which the months of qualified use bear to thirty-six.

(iii) Except with respect to that property to which subparagraph (iv) of this paragraph applies, with respect to property subject to the provisions of section one hundred sixty-eight of the internal revenue code other than three-year property as defined in subsection (e) of such section one hundred sixty-eight which is disposed of or ceases to be in qualified use prior to the end of the taxable year in which the credit is to be taken, the amount of the credit shall be that portion of the credit provided for in this subdivision which represents the ratio which the months of qualified use bear to sixty. If property on which credit has been taken is disposed of or ceases to be in qualified use prior to the end of sixty months, the difference between the credit taken and the credit allowed for actual use must be added back in the year of disposition. The amount of credit allowed for actual use shall be determined by multiplying the original credit by the ratio which the months of qualified use bear to sixty.

(iv) With respect to any property to which section one hundred sixty-eight of the internal revenue code applies, which is a building or a structural component of a building and which is disposed of or ceases to be in qualified use prior to the end of the taxable year in which the credit is to be taken, the amount of the credit shall be that portion of the credit provided for in this subdivision which represents the ratio which the months of qualified use bear to sixty. If property on which credit has been taken is disposed of or ceases to be in qualified use prior to the end of sixty months, the difference between the credit taken and the credit allowed for actual use must be added back in the year of disposition. The amount of credit allowed for actual use shall be determined by multiplying the original credit by the ratio which the months of qualified use bear to sixty.

Provided, however, if such property is disposed of or ceases to be in qualified use after it has been in qualified use for more than twelve consecutive years, it shall not be necessary to add back the credit as provided in this subparagraph. The amount of credit allowed for actual use shall be determined by multiplying the original credit by the ratio which the months of qualified use bear to the total number of months over which the taxpayer chooses to deduct the property under the internal revenue code. If property on which credit has been taken is disposed of or ceases to be in qualified use prior to the end of the period over which the taxpayer chooses to deduct the property under the internal revenue code, the difference between the credit taken and the credit allowed for actual use must be added back in the year of disposition.

(v) For purposes of this paragraph, disposal or cessation of qualified use shall not be deemed to have occurred solely by reason of the termination or expiration of an empire zone's designation as such.

(vi)(A) For purposes of this paragraph, the decertification of a business enterprise with respect to an empire zone shall constitute a disposal or cessation of qualified use of the property on which the credit was taken which is located in the zone to which the decertification applies, on the effective date of such decertification.

(B) Where a business enterprise has been decertified based on a finding pursuant to clause one, two, or five of subdivision (a) of section nine hundred fifty-nine of the general municipal law, the amount required to be added back by reason of this paragraph shall be (I) the amount of credit, with respect to the property which is disposed of or ceases to be in qualified use, which was deducted from the taxpayer's
tax otherwise due under this article for all prior taxable years, reduced (but not below zero) by (II) the credit allowed for actual use. For purposes of this subparagraph, the attribution to specific property of credit amounts deducted from tax shall be established in accordance with the date of placement in service of such property in the empire zone.

(C) In no event shall the amount of the credit allowed pursuant to this subdivision be rendered, solely by reason of clause (A) of this subparagraph, less than the amount of the credit to which the taxpayer would otherwise be entitled under subdivision one of this section.

(D) Notwithstanding any other provision of this subdivision, in the case of a business enterprise which has been decertified, any amount of credit allowed with respect to the property of such business enterprise located in the zone to which the decertification applies which is carried over pursuant to paragraph (d) of this subdivision shall not be carried over beyond the seventh taxable year next following the taxable year with respect to which the credit provided for in this subdivision was allowed.

(vii) For purposes of this paragraph, where a credit is allowed with respect to an air pollution control facility on the basis of a certificate of compliance issued pursuant to the environmental conservation law and the certificate is revoked pursuant to subdivision three of section 19-0309 of the environmental conservation law, such revocation shall constitute a disposal or cessation of qualified use, except with respect to property contained in or comprising such facility which is described in clause (A), (B), or (C) of subparagraph (v) of paragraph (b) of this subdivision other than as part of or comprising an air pollution control facility. Also for purposes of this paragraph, the use of an air pollution control facility or an industrial waste treatment facility for the primary purpose of salvaging materials which are usable in the manufacturing process or are marketable shall constitute a cessation of qualified use, except with respect to property contained in or comprising such facility which is described in clause (A) or (C) of subparagraph (v) of paragraph (b) of this subdivision.

(viii) Except as provided in this subparagraph, this paragraph shall not apply to a credit allowed by this subdivision to a taxpayer that is a partner in a partnership in the case of manufacturing property, provided, at the time such property was placed in service by such partnership in an empire zone the basis for federal income tax purposes for such property (or a project that includes such property) equaled or exceeded three hundred million dollars and such partner owned its partnership interest for at least three years from the date such property was placed in service. If such property ceases to be in qualified use after it is placed in service, this paragraph shall apply to such partner in the year such property ceases to be in qualifying use.

(ix) If a taxpayer, which is approved by the commissioner of economic development as the owner of a qualified investment project or a significant capital investment project pursuant to subdivision (w) of section nine hundred fifty-nine of the general municipal law, fails to (A) create at least the minimum number of jobs at such project as required by the provisions of subdivision (s) or (t) of section nine hundred fifty-seven and subdivision (w) of section nine hundred fifty-nine of the general municipal law or (B) place in service property comprising such qualified investment project or significant capital investment project with a basis for federal income tax purposes equaling or exceeding the applicable minimum required basis as provided in such subdivision (s) or (t), whichever is relevant, by the last day of the fifth taxable year following the taxable year in which a credit is first allowed under this subdivision for the property which comprises such qualified investment project or such significant capital investment project, the total amount of the credit allowed under this subdivision was otherwise entitled under subdivision one of this section.
for all taxable years with respect to the property which comprises such project which has been refunded to such taxpayer shall be added back in such taxable year.

(g) Notwithstanding the expiration of the empire zones program under article eighteen-B of the general municipal law, a taxpayer that is certified as a qualified investment project pursuant to such article eight-B on the day immediately preceding the day the empire zones program expired shall continue to be deemed certified under such article eighteen-B for purposes of this subdivision for the remainder of the taxable year in which the expiration occurred and for the next succeeding nine taxable years. In addition, the areas designated as empire zones in which the taxpayer is certified as a qualified investment project on the day immediately preceding the day the empire zones program expired shall continue to be deemed empire zones for purposes of this subdivision for the remainder of the taxable year in which the expiration occurred and for the next succeeding nine taxable years.

(h) Notwithstanding the expiration of the empire zones program under article eighteen-B of the general municipal law and except as provided in paragraph (g) of this subdivision, a taxpayer that is certified as an empire zone business pursuant to such article eighteen-B on the day immediately preceding the day the empire zones program expired shall continue to be deemed certified under such article eighteen-B for purposes of this subdivision until April first, two thousand fourteen. In addition, the areas designated as empire zones in which the taxpayer is certified as an empire zone business on the day immediately preceding the day the empire zones program expired shall continue to be deemed empire zones for purposes of this subdivisions until April first, two thousand fourteen.

4. Empire zone employment incentive credit (EZ-EIC). (a) Application of credit. Where a taxpayer is allowed a credit under subdivision three of this section, the taxpayer shall be allowed a credit for each of the three years next succeeding the taxable year for which the credit under such subdivision three is allowed, with respect to such property, whether or not deductible in such taxable year or in subsequent taxable years pursuant to paragraph (d) of such subdivision three, of thirty percent of the credit allowable under such subdivision three; provided, however, that the credit allowable under this subdivision for any taxable year shall only be allowed if the average number of employees employed by the taxpayer in the empire zone, designated pursuant to article eighteen-B of the general municipal law, in which such property is located during such taxable year is at least one hundred one percent of the average number of employees employed by the taxpayer in such empire zone, during the taxable year immediately preceding the taxable year for which the credit under such subdivision three is allowed and provided, further, that if the taxpayer was not subject to tax and did not have a taxable year immediately preceding the taxable year for which the credit under subdivision three of this section is allowed, the credit allowable under this subdivision for any taxable year shall be allowed if the average number of employees employed in such empire zone in such taxable year is at least one hundred one percent of the average number of such employees during the taxable year in which the credit under such subdivision three is allowed.

(b) Average number of employees. The average number of employees employed in an empire zone in a taxable year shall be computed by ascertaining the number of such employees within such zone except general executive officers, employed by the taxpayer on the thirty-first day of March, the thirtieth day of June, the thirtieth day of September and the thirty-first day of December in the taxable year, by adding together the number of employees ascertained on each of such dates and dividing the sum so obtained by the number of such above-mentioned dates occurring within the taxable year.
(c) Carryover. In no event shall the credit herein provided for be allowed in an amount which will reduce the tax payable to less than the fixed dollar minimum amount prescribed in paragraph (d) of subdivision one of section two hundred ten of this article. Provided, however, that if the amount of credit allowable under this subdivision for any taxable year reduces the tax to such amount or if the taxpayer otherwise pays tax based on the fixed dollar minimum amount, any amount of credit not deductible in such taxable year may be carried over to the following year or years and may be deducted from the taxpayer's tax for such year or years. In lieu of such carryover, any such taxpayer, which is approved as the owner of a qualified investment project or a significant capital investment project pursuant to subdivision (v) of section nine hundred fifty-nine of the general municipal law, may elect, on its report for its taxable year with respect to which such credit is allowed, to treat fifty percent of the amount of such carryover as an overpayment of tax to be credited or refunded in accordance with the provisions of section one thousand eighty-six of this chapter. Provided, however, in the case of such owner of a qualified investment project or a significant capital investment project, only fifty percent of the amount of such carryover which is attributable to the credit allowed under this subdivision with respect to property which is part of such project shall be allowed to be credited or refunded and such owner shall be allowed such credit or refund only for those taxable years in which such owner would be allowed a credit or refund of the empire zone investment tax credit pursuant to paragraph (d) of subdivision three of this section. Provided, further, however, the provisions of subsection (c) of section one thousand eighty-eight of this chapter notwithstanding, no interest shall be paid thereon.

(c-1) Any carryover of a credit from prior taxable years will not be allowed if an empire zone retention certificate is not issued pursuant to subdivision (w) of section nine hundred fifty-nine of the general municipal law to the empire zone enterprise which is the basis of the credit.

(d) Notwithstanding the expiration of the empire zones program under article eighteen-B of the general municipal law, a taxpayer that is certified as a qualified investment project pursuant to such article eighteen-B on the day immediately preceding the day the empire zones program expired shall continue to be deemed certified under such article eighteen-B for purposes of this subdivision for the remainder of the taxable year in which the expiration occurred and for the next succeeding nine taxable years. In addition, the areas designated as empire zones in which the taxpayer is certified as a qualified investment project on the day immediately preceding the day the empire zones program expired shall continue to be deemed empire zones for purposes of this subdivision for the remainder of the taxable year in which the expiration occurred and for the next succeeding nine taxable years.

(e) Notwithstanding the expiration of the empire zones program under article eighteen-B of the general municipal law and except as provided in paragraph (d) of this subdivision, a taxpayer that is certified as an empire zone business pursuant to such article eighteen-B on the day immediately preceding the day the empire zones program expired shall continue to be deemed in the empire zone in which the taxpayer was certified as an empire zone business on the day immediately preceding the day the empire zones program expired for each of the three years next succeeding the taxable year for which the credit under subdivision three of this section is allowed.

5. QEZE credit for real property taxes. (a) Allowance of credit. A taxpayer which is a qualified empire zone enterprise shall be allowed a credit for eligible real property taxes, to be computed as provided in section fifteen of this chapter, against the tax imposed by this article.
(b) Application of credit. The credit allowed under this subdivision for any taxable year shall not reduce the tax due for such year to less than the fixed dollar minimum amount prescribed in paragraph (d) of subdivision one of section two hundred ten of this article. However, if the amount of credit allowed under this subdivision for any taxable year reduces the tax to such amount or if the taxpayer otherwise pays tax based on the fixed dollar minimum amount, any amount of credit thus not deductible in such taxable year shall be treated as an overpayment of tax to be credited or refunded in accordance with the provisions of section one thousand eighty-six of this chapter. Provided, however, the provisions of subsection (c) of section one thousand eighty-eight of this chapter notwithstanding, no interest shall be paid thereon.

6. QEZE tax reduction credit. (a) Allowance of credit. A taxpayer which is a qualified empire zone enterprise shall be allowed a QEZE tax reduction credit, to be computed as provided in section sixteen of this chapter, against the tax imposed by this article.

(b) Application of credit. The credit allowed under this subdivision for any taxable year shall not reduce the tax due for such year to less than the fixed dollar minimum amount prescribed in paragraph (d) of subdivision one of section two hundred ten of this article. Provided, however, this paragraph shall not apply to a taxpayer with a zone allocation factor of one hundred percent.

7. Qualified emerging technology company employment credit. (a) Application of credit. A taxpayer shall be allowed a credit, to be computed as hereinafter provided, against the tax imposed by this article, provided:

(i) the taxpayer is a qualified emerging technology company pursuant to the provisions of section thirty-one hundred two-e of the public authorities law; and

(ii) the average number of individuals employed full time by the taxpayer in New York state during the taxable year is at least one hundred one percent of the taxpayer's base year employment. For the purposes of this subdivision, "base year employment" means the average number of individuals employed full-time by the taxpayer in the state during the three taxable years immediately preceding the first taxable year in which the credit is claimed. Where the taxpayer provided full-time employment within the state during only a portion of such three-year period, then the first effective date for the company to take advantage of this credit shall be the next year following the first full taxable year that the company had full-time employment in New York state. For the purposes of this paragraph the term "three years" shall be deemed to refer instead to the prior year's full-time employment after the first year and the average of the first eight quarters of employment after the first two taxable years in New York state.

(b) Credit limitation. The credit shall be allowed only in the first taxable year in which the credit is claimed and in each of the next two taxable years, provided that the conditions of paragraph (a) of this subdivision are satisfied in each taxable year.

(c) Average number of individuals employed full-time. For the purposes of this subdivision, average number of individuals employed full-time shall be computed by adding the number of such individuals employed by the taxpayer at the end of each quarter during each taxable year or other applicable period and dividing the sum so obtained by the number of such quarters occurring within such taxable year or other applicable period; provided however, except that in computing base year employment, there shall be excluded therefrom any employee with respect to whom a credit provided for under subdivision six of this section is claimed for the taxable year.

(d) Amount of credit. The amount of the credit shall equal the product of one thousand dollars times the number of individuals employed full-time by the taxpayer in the taxable year that are in excess of one
hundred percent of the taxpayer's base year employment.

(e) Carryover. The credit allowed under this subdivision for any taxable year shall not reduce the tax due for such year to less than the fixed dollar minimum amount prescribed in paragraph (d) of subdivision one of section two hundred ten of this article. However, if the amount of credit allowed under this subdivision for any taxable year reduces the tax to such amount or if the taxpayer otherwise pays tax based on the fixed dollar minimum amount, any amount of credit thus not deductible in such taxable year shall be treated as an overpayment of tax to be credited or refunded in accordance with the provisions of section one thousand eighty-six of this chapter. Provided, however, the provisions of subsection (c) of section one thousand eighty-eight of this chapter notwithstanding, no interest shall be paid thereon.

8. Qualified emerging technology company capital tax credit. (a) Amount of credit. A taxpayer shall be allowed a credit against the tax imposed by this article. The amount of the credit shall be equal to one of the following percentages, per each qualified investment in a qualified emerging technology company as defined in section thirty-one hundred two-e of the public authorities law, made during the taxable year, and certified by the commissioner, either:

(1) ten percent of qualified investments in qualified emerging technology companies, except for investments made by or on behalf of an owner of the business, including, but not limited to, a stockholder, partner or sole proprietor, or any related person, as defined in subparagraph one of paragraph three of subsection (b) of section four hundred sixty-five of the internal revenue code, and provided, however, that the taxpayer certifies to the commissioner that the qualified investment will not be sold, transferred, traded, or disposed of during the four years following the year in which the credit is first claimed; or

(2) twenty percent of qualified investments in qualified emerging technology companies, except for investments made by or on behalf of an owner of the business, including, but not limited to, a stockholder, partner or sole proprietor, or any related person, as defined in subparagraph (C) of paragraph three of subsection (b) of section four hundred sixty-five of the internal revenue code, and provided, however, that the taxpayer certifies to the commissioner that the qualified investment will not be sold, transferred, traded, or disposed of during the nine years following the year in which the credit is first claimed.

(b) Qualified investment. "Qualified investment" means the contribution of property to a corporation in exchange for original issue capital stock or other ownership interest, the contribution of property to a partnership in exchange for an interest in the partnership, and similar contributions in the case of a business entity not in corporate or partnership form in exchange for an ownership interest in such entity. The total amount of credit allowable to a taxpayer under this provision for all years, taken in the aggregate, shall not exceed one hundred fifty thousand dollars in the case of investments made pursuant to subparagraph one of paragraph (a) of this subdivision and shall not exceed three hundred thousand dollars in the case of investments made pursuant to subparagraph two of paragraph (a) of this subdivision.

(c) Carryover. In no event shall the credit and carryover of such credit allowed under this subdivision for any taxable year, in the aggregate, reduce the tax due for such year to less than the fixed dollar minimum amount prescribed in paragraph (d) of subdivision one of section two hundred ten of this chapter. However, if the amount of credit or carryovers of such credit, or both, allowed under this subdivision for any taxable year reduces the tax to such amount or if the taxpayer otherwise pays tax based on the fixed dollar minimum amount, or if any part of the credit or carryovers of such credit may not be deducted from the tax otherwise due by reason of the final sentence of this paragraph, any amount of credit or carryovers of such credit thus not deductible in...
such taxable year may be carried over to the following year or years and 
may be deducted from the tax for such year or years. In addition, the 
amount of such credit, and carryovers of such credit to the taxable 
year, deducted from the tax otherwise due may not, in the aggregate, 
exceed fifty percent of the tax imposed under section two hundred nine 
of this article computed without regard to any credit provided for by 
this section.

(d) Recapture. (1) Where a taxpayer sells, transfers or otherwise 
disposes of corporate stock, a partnership interest or other ownership 
interest arising from the making of a qualified investment which was the 
basis, in whole or in part, for the allowance of the credit provided for 
under subparagraph one of paragraph (a) of this subdivision, or where an 
investment which was the basis for such allowance is, in whole or in 
part, recovered by such taxpayer, and such disposition or recovery 
occurs during the taxable year or within forty-eight months from the 
close of the taxable year with respect to which such credit is allowed, 
the taxpayer shall add back, with respect to the taxable year in which 
disposition or recovery described above occurred, the required 
portion of the credit originally allowed.

(2) Where a taxpayer sells, transfers or otherwise disposes of corpo-
rate stock, a partnership interest or other ownership interest arising 
from the making of a qualified investment which was the basis, in whole 
or in part, for the allowance of the credit provided for under subpara-
graph two of paragraph (a) of this subdivision, or where an investment 
which was the basis for such allowance is in any manner, in whole or in 
part, recovered by such taxpayer, and such disposition or recovery 
occurs during the taxable year or within one hundred eight months from 
the close of the taxable year with respect to which such credit is 
allowed, the taxpayer shall add back, with respect to the taxable year 
in which the disposition or recovery described in subparagraph one of 
this paragraph occurred the required portion of the credit originally 
allowed.

(3) The required portion of the credit originally allowed shall be the 
product of (A) the portion of such credit attributable to the property 
disposed of and (B) the applicable percentage.

(4) The applicable percentage shall be:

(A) for credits allowed pursuant to subparagraph one of paragraph (a) 
of this subdivision:

(i) one hundred percent, if the disposition or recovery occurs within 
the taxable year with respect to which the credit is allowed or within 
twelve months of the end of such taxable year,

(ii) seventy-five percent, if the disposition or recovery occurs more 
than twelve but not more than twenty-four months after the end of the 
taxable year with respect to which the credit is allowed,

(iii) fifty percent, if the disposition or recovery occurs more than 
twenty-four months but not more than thirty-six months after the end of 
the taxable year with respect to which the credit is allowed, or

(iv) twenty-five percent, if the disposition or recovery occurs more 
than thirty-six months but not more than forty-eight months after the 
end of the taxable year with respect to which the credit is allowed;

(B) for credits allowed pursuant to subparagraph two of paragraph (a) 
of this subdivision:

(i) one hundred percent, if the disposition or recovery occurs within 
the taxable year with respect to which the credit is allowed or within 
twelve months of the end of such taxable year,

(ii) eighty percent, if the disposition or recovery occurs more than 
twelve but not more than forty-eight months after the end of the taxable 
year with respect to which the credit is allowed,

(iii) sixty percent, if the disposition or recovery occurs more than 
forty-eight months but not more than seventy-two months after the end of 
the taxable year with respect to which the credit is allowed,
(iv) forty percent, if the disposition or recovery occurs more than seventy-two months but not more than ninety-six months after the end of the taxable year with respect to which the credit is allowed, or

(v) twenty percent, if the disposition or recovery occurs more than ninety-six months but not more than one hundred eight months after the end of the taxable year with respect to which the credit is allowed.

9. Credit for the special additional mortgage recording tax. (a) Application of credit. A taxpayer shall be allowed a credit, to be credited against the tax imposed by this article, equal to the amount of the special additional mortgage recording tax paid by the taxpayer pursuant to the provisions of subdivision one-a of section two hundred fifty-three of this chapter or mortgages recorded. Provided, however, no credit shall be allowed with respect to a mortgage of real property principally improved or to be improved by one or more structures containing in the aggregate not more than six residential dwelling units, each dwelling unit having its own separate cooking facilities, where the real property is located in one or more of the counties comprising the metropolitan commuter transportation area. Provided further, however, no credit shall be allowed with respect to a mortgage of real property principally improved or to be improved by one or more structures containing in the aggregate not more than six residential dwelling units, each dwelling unit having its own separate cooking facilities, where the real property is located in the county of Erie.

S. 6359--D 93  A. 8559--D

(b) Carryover. In no event shall the credit herein provided for be allowed in an amount which will reduce the tax payable to less than the fixed dollar minimum amount prescribed in paragraph (d) of subdivision one of section two hundred ten of this article. If, however, the amount of credit allowable under this subdivision for any taxable year, including any credit carried over from a prior taxable year, reduces the tax to such amount or if the taxpayer otherwise pays tax based on the fixed dollar minimum amount, any amount of credit not deductible in such taxable year may be carried over to the following year or years and may be deducted from the taxpayer's tax for such year or years.

10. Credit for servicing certain mortgages. (a) General. Every taxpayer meeting the requirements of the state of New York mortgage agency applicable to the servicing of mortgages acquired by such agency pursuant to the state of New York mortgage agency act, which shall have entered into a contract with the state of New York mortgage agency to service mortgages acquired by such agency pursuant to the state of New York mortgage agency act, shall have credited to it annually an amount equal to two and ninety-three one hundredths per centum of the total principal and interest collected by the taxpayer during its taxable year on each such mortgage secured by a lien on real estate improved by a one-family to four-family residential structure and an amount equal to the interest collected by the taxpayer during its taxable year on each such mortgage secured by a lien on real property improved by a structure occupied as the residence of five or more families living independently of each other, multiplied by a fraction the denominator of which shall be the interest rate payable on the mortgage (computed to five decimal places) and the numerator of which shall be .00125 in the case of such a mortgage acquired by such agency for less than one million dollars, and .00100 in the case of such a mortgage acquired by such agency for one million dollars or more. In no event shall the credit allowed under this subdivision reduce the tax to less than the fixed dollar minimum amount prescribed in paragraph (d) of subdivision one of section two hundred ten of this article. In computing such tax credit for the servicing of mortgages on one-family to four-family residential structures, the taxpayer shall not be entitled to credit for the collection of curtailment or payments in discharge of any such mortgage. For the purposes of this subdivision,

(b)(i) a "curtailment" shall mean amounts paid by mortgagors
(A) in excess of the monthly constant due during the month of collection and
(B) in reduction of the unpaid principal balance of the mortgage; in the absence of clear evidence to the contrary, amounts paid in excess of the monthly constant due during the month of collection shall be deemed to be in reduction of the unpaid principal balance of the mortgage; and
(ii) "monthly constant" shall mean the amount of principal and interest which is due and payable according to the mortgage documents on each periodic payment date.

11. Agricultural property tax credit. (a) General. In the case of a taxpayer which is an eligible farmer or an eligible farmer who has paid taxes pursuant to a land contract, there shall be allowed a credit for the allowable school district property taxes. The term "allowable school district property taxes" means the school district property taxes paid during the taxable year on qualified agricultural property, subject to the acreage limitation provided in paragraph (e) of this subdivision and the income limitation provided in paragraph (f) of this subdivision.

(b) Eligible farmer. For purposes of this subdivision, the term "eligible farmer" means a taxpayer whose federal gross income from farming for the taxable year is at least two-thirds of excess federal gross income. The term "eligible farmer" also includes a corporation other than the taxpayer of record for qualified agricultural land which has paid the school district property taxes on such land pursuant to a contract for the future purchase of such land; provided that such corporation has a federal gross income from farming for the taxable year which is at least two-thirds of excess federal gross income; and provided further that, in determining such income eligibility, a taxpayer may, for any taxable year, use the average of such federal gross income from farming for that taxable year and such income for the two consecutive taxable years immediately preceding such taxable year. Excess federal gross income means the amount of federal gross income from all sources for the taxable year in excess of thirty thousand dollars. For the purposes of this paragraph, payments from the state's farmland protection program, administered by the department of agriculture and markets, shall be included as federal gross income from farming for otherwise eligible farmers.

(c) School district property taxes. For purposes of this subdivision, the term "school district property taxes" means all property taxes, special ad valorem levies and special assessments, exclusive of penalties and interest, levied for school district purposes on the qualified agricultural property owned by the taxpayer.

(d) Qualified agricultural property. For purposes of this subdivision, the term "qualified agricultural property" means land located in this state which is used in agricultural production, and land improvements, structures and buildings (excluding buildings used for the taxpayer's residential purpose) located on such land which are used or occupied to carry out such production. Qualified agricultural property also includes land set aside or retired under a federal supply management or soil conservation program or land that at the time it becomes subject to a conservation easement met the requirements under this paragraph.

(e) Acreage limitation. (i) Eligible taxes. In the event that the qualified agricultural property owned by the taxpayer includes land in excess of the base acreage as provided in this paragraph, the amount of school district property taxes eligible for credit under this subdivision shall be that portion of the school district property taxes which bears the same ratio to the total school district property taxes paid during the taxable year, as the acreage allowable under this paragraph bears to the entire acreage of such land.

(ii) Allowable acreage. The allowable acreage is the sum of the base acreage set forth below and fifty percent of the incremental acreage. The incremental acreage is the excess of the entire acreage of qualified
agricultural land owned by the taxpayer over the base acreage. Except as
provided in subparagraph (iii) of this paragraph, the base acreage is
three hundred fifty acres.
The total base acreage may be increased by any acreage enrolled or
participating during the taxable year in a federal environmental conser-
vation acreage reserve program pursuant to title three of the federal
agriculture improvement and reform act of nineteen hundred ninety-six.

(iii) Base acreage of related persons. Where the taxpayer and one or
more related persons each own qualified agricultural property on the
first day of March of any year, the base acreage under subparagraph (ii)
of this paragraph shall be divided equally and allotted among the
taxpayer and such related persons, and the taxpayer's base acreage for
the taxable year which includes such March first shall be limited to its
allotted share. Provided, however, if the taxpayer and all such related
persons consent (at such time and in such manner as the commissioner may
prescribe) to an unequal division, the taxpayer's base acreage for such
taxable year shall be limited to its allotted share under such unequal
division.

(iv) Related persons. (A) For purposes of subparagraph (iii) of this
paragraph, the term "related person" means:

(I) a corporation subject to tax under this article, where the taxpay-
er and the corporation are members of the same controlled group, as
defined in section 267(f) of the internal revenue code;

(II) an individual, partnership, estate or trust, where more than
fifty percent in value of the outstanding stock of the taxpayer is
owned, directly or indirectly, by or for such individual, partnership,
estate or trust by or for the grantor of such trust;

(III) a corporation subject to tax under this article, or a partner-
ship, estate or trust, if the same person owns more than fifty percent
in value of the outstanding stock of the taxpayer and more than fifty
percent in value of the outstanding stock of the corporation, or more
than fifty percent of the capital or profits interest in the partnership,
or more than fifty percent of the beneficial interest in the
estate or trust;

(IV) a partnership, estate or trust of which the taxpayer owns,
directly or indirectly, more than fifty percent of the capital, profits
or beneficial interest.

(B) In determining whether a person is a related person within the
meaning of this subparagraph:

(I) stock owned, directly or indirectly, by or for a corporation,
partnership, estate or trust shall be considered as being owned propor-
tionately by or for its shareholders, partners or beneficiaries;

(II) an individual shall be considered as owning the stock owned,
directly or indirectly, by or for his spouse;

(III) stock constructively owned by a person by reason of the applica-
tion of item (I) of this clause shall, for the purpose of applying item
(I) or (II) of this clause, be treated as actually owned by such person.

(f) Income limitation. (i) In the event that the modified entire net
income of the taxpayer exceeds two hundred thousand dollars, the allow-
able school district property taxes under paragraph (a) of this subdivi-
sion shall be the eligible taxes under subparagraph (i) of paragraph (e)
of this subdivision reduced by the product of the amount of such eligi-
ble taxes and a percentage, such percentage to be determined by multi-
plying one hundred percent by a fraction, the numerator of which is the
lesser of one hundred thousand dollars or the excess of the taxpayer's
modified entire net income over two hundred thousand dollars and the
denominator of which is one hundred thousand dollars. For purposes of
the preceding sentence, the term "eligible taxes", where the acreage
limitation of paragraph (e) of this subdivision does not apply, shall
mean the total school district property taxes paid during the taxable
year.
(ii) The term "modified entire net income" means the entire net income for the taxable year reduced by the amount of principal paid on farm indebtedness during the taxable year. The term "farm indebtedness" means debt incurred or refinanced which is secured by farm property, where the proceeds of the debt are disbursed for expenditures incurred in the business of farming.

(g) Carryover. In no event shall the credit provided herein be allowed in an amount which will reduce the tax payable to less than the fixed dollar minimum amount prescribed in paragraph (d) of subdivision one of section two hundred ten of this article. If, however, the amount of credit allowable under this subdivision for any taxable year reduces the tax to such amount or if the taxpayer otherwise pays tax based on the fixed dollar minimum amount, any amount of credit not deductible in such taxable year may be carried over to the following year or years and may be deducted from the taxpayer's tax for such year or years. Provided, however, in lieu of carrying over the unused portion of such credit, the taxpayer may elect to treat such unused portion as an overpayment of tax to be credited or refunded in accordance with the provisions of section one thousand eighty-six of this chapter except that no interest shall be paid on such overpayment.

(h) Nonqualified use. (i) No credit in conversion year. In the event that qualified agricultural property is converted by the taxpayer to nonqualified use, credit under this subdivision shall not be allowed with respect to such property for the taxable year of conversion (the conversion year).

(ii) Credit recapture. If the conversion by the taxpayer of qualified agricultural property to nonqualified use occurs during the period of the two taxable years following the taxable year for which the credit under this subdivision was first claimed with respect to such property, the credit allowed with respect to such property for the taxable years prior to the conversion year must be added back in the conversion year. Where the property converted includes land, and where the conversion is of only a portion of such land, the credit allowed with respect to the property converted shall be determined by multiplying the entire credit under this subdivision for the taxable years prior to the conversion year by a fraction, the numerator of which is the acreage converted and the denominator of which is the entire acreage of such land owned by the taxpayer immediately prior to the conversion.

(iii) Exception to recapture. Subparagraph (ii) of this paragraph shall not apply to the conversion of property where the conversion is by reason of involuntary conversion, within the meaning of section one thousand thirty-three of the internal revenue code.

(iv) Conversion to nonqualified use. For purposes of this paragraph, a sale or other disposition of qualified agricultural property alone shall not constitute a conversion to a nonqualified use.

(i) Special rules. For purposes of this subdivision, the term "federal gross income from farming" shall include gross income from the production of maple syrup, cider, Christmas trees derived from a managed Christmas tree operation whether dug for transplanting or cut from the stump, or from a commercial horse boarding operation as defined in subdivision thirteen of section three hundred one of the agriculture and markets law, or from the sale of wine from a licensed farm winery as provided for in article six of the alcoholic beverage control law, or from the sale of cider from a licensed farm cidery as provided for in section fifty-eight-c of the alcoholic beverage control law.

(j) Election to deem gross income of New York C corporation to shareholders. For purposes of this subdivision, federal gross income from farming shall be zero for any taxable year of a New York C corporation for which the election under paragraph nine of subsection (n) of section six hundred six of this chapter is in effect.

12. Credit for employment of persons with disabilities. (a) Allowance
of credit. A taxpayer shall be allowed a credit, to be computed as hereinafter provided, against the tax imposed by this article, for employing within the state a qualified employee.

(b) Qualified employee. A qualified employee is an individual:

(1) who is certified by the education department, or in the case of an individual who is blind or visually handicapped, by the state agency responsible for provision of vocational rehabilitation services to the blind and visually handicapped: (i) as a person with a disability which constitutes or results in a substantial handicap to employment and (ii) as having completed or as receiving services under an individualized written rehabilitation plan approved by the education department or other state agency responsible for providing vocational rehabilitation services to such individual; and

(2) who has worked on a full-time basis for the employer who is claiming the credit for at least one hundred eighty days or four hundred hours.

(c) Amount of credit. Except as provided in paragraph (d) of this subdivision, the amount of credit shall be thirty-five percent of the first six thousand dollars in qualified first-year wages earned by each qualified employee. "Qualified first-year wages" means wages paid or incurred by the taxpayer during the taxable year to qualified employees which are attributable, with respect to any such employee, to services rendered during the one-year period beginning with the day the employee begins work for the taxpayer.

(d) Credit where federal work opportunity tax credit applies. With respect to any qualified employee whose qualified first-year wages under paragraph (c) of this subdivision also constitute qualified first-year wages for purposes of the work opportunity tax credit for vocational rehabilitation referrals under section fifty-one of the internal revenue code, the amount of credit under this subdivision shall be thirty-five percent of the first six thousand dollars in qualified second-year wages earned by each such employee. "Qualified second-year wages" means wages paid or incurred by the taxpayer during the taxable year to qualified employees which are attributable, with respect to any such employee, to services rendered during the one-year period beginning one year after the employee begins work for the taxpayer.

(e) Carryover. The credit allowed under this subdivision for any taxable year shall not reduce the tax due for such year to less than the fixed dollar minimum amount prescribed in paragraph (d) of subdivision one of section two hundred ten of this chapter. However, if the amount of credit allowable under this subdivision for any taxable year reduces the tax to such amount or if the taxpayer otherwise pays tax based on the fixed dollar minimum amount, any amount of credit not deductible in such taxable year may be carried over to the following year or years, and may be deducted from the taxpayer's tax for such year or years.

(f) Coordination with federal work opportunity tax credit. The provisions of section fifty-one and fifty-two of the internal revenue code, as such sections applied on October first, nineteen hundred ninety-six, that apply to the federal work opportunity tax credit for vocational rehabilitation referrals shall apply to the credit under this subdivision to the extent that such sections are consistent with the specific provisions of this subdivision, provided that in the event of a conflict the provisions of this subdivision shall control.

13. Credit for purchase of an automated external defibrillator. A taxpayer shall be allowed a credit, to be computed as hereinafter provided, against the tax imposed by this article, for the purchase, other than for resale, of an automated external defibrillator, as such term is defined in section three thousand-b of the public health law. The amount of credit shall be the cost to the taxpayer of automated
13. Credit for purchase of long-term care insurance. (a) General. A taxpayer shall be allowed a credit against the tax imposed by this article equal to twenty percent of the premium paid during the taxable year for long-term care insurance. In order to qualify for such credit, the taxpayer's premium payment must be for the purchase of or for continuing coverage under a long-term care insurance policy that qualifies for such credit pursuant to section one thousand one hundred seventeen of the insurance law.

(b) Carryover. The credit allowed under this subdivision for any year shall not reduce the tax due for such year to less than the fixed dollar minimum amount prescribed in paragraph (d) of subdivision one of section two hundred ten of this article. If, however, the amount of credit allowable under this subdivision for any taxable year reduces the tax to such amount or if the taxpayer otherwise pays tax based on the fixed dollar minimum amount, any amount of credit not deductible in such taxable year may be carried over to the following year or years and may be deducted from the taxpayer's tax for such year or years.

14. Low-income housing credit. (a) Allowance of credit. A taxpayer shall be allowed a credit against the tax imposed by this article with respect to the ownership of eligible low-income buildings, computed as provided in section eighteen of this chapter.

(b) Application of credit. The credit and carryovers of such credit allowed under this subdivision for any taxable year shall not, in the aggregate, reduce the tax due for such year to less than the fixed dollar minimum amount prescribed in paragraph (d) of subdivision one of section two hundred ten of this article. However, if the amount of credit or carryovers of such credit, or both, allowed under this subdivision for any taxable year reduces the tax to such amount or if the taxpayer otherwise pays tax based on the fixed dollar minimum amount, any amount of credit or carryovers of such credit thus not deductible in such taxable year may be carried over to the following year or years and may be deducted from the tax for such year or years.

(c) Credit recapture. For provisions requiring recapture of credit, see subdivision (b) of section eighteen of this chapter.

15. Green building credit. (a) Allowance of credit. A taxpayer shall be allowed a credit, to be computed as provided in section nineteen of this chapter, against the tax imposed by this article.

(b) Carryovers. The credit and carryovers of such credit allowed under this subdivision for any taxable year shall not, in the aggregate, reduce the tax due for such year to less than the fixed dollar minimum amount prescribed in paragraph (d) of subdivision one of section two hundred ten of this article. However, if the amount of credit or carryovers of such credit, or both, allowed under this subdivision for any taxable year reduces the tax to such amount or if the taxpayer otherwise pays tax based on the fixed dollar minimum amount, any amount of credit or carryovers of such credit thus not deductible in such taxable year may be carried over to the following year or years and may be deducted from the tax for such year or years.
subdivision one of section two hundred ten of this article. However, if
the amount of credits allowed under this subdivision for any taxable
year reduces the tax to such amount or if the taxpayer otherwise pays
tax based on the fixed dollar minimum amount, any amount of credit thus
not deductible in such taxable year shall be treated as an overpayment
of tax to be credited or refunded in accordance with the provisions of
section one thousand eighty-six of this chapter. Provided, however, the
provisions of subsection (c) of section one thousand eighty-eight of
this chapter notwithstanding, no interest shall be paid thereon.

18. Remediated brownfield credit for real property taxes for qualified
sites. (a) Allowance of credit. A taxpayer which is a developer of a
qualified site shall be allowed a credit for eligible real property
taxes, to be computed as provided in subdivision (b) of section twenty-
two of this chapter, against the tax imposed by this article. For
purposes of this subdivision, the terms "qualified site" and "developer"
shall have the same meaning as set forth in paragraphs two and three,
respectively, of subdivision (a) of section twenty-two of this chapter.

(b) Application of credit. The credit allowed under this subdivision
for any taxable year shall not reduce the tax due for such year to less
than the fixed dollar minimum amount prescribed in paragraph (d) of
subdivision one of section two hundred ten of this article. However, if
the amount of credit allowed under this subdivision for any taxable year
reduces the tax to such amount or if the taxpayer otherwise pays tax
based on the fixed dollar minimum amount, any amount of credit thus not
deductible in such taxable year shall be treated as an overpayment of
tax to be credited or refunded in accordance with the provisions of
section one thousand eighty-six of this chapter. Provided, however, the
provisions of subsection (c) of section one thousand eighty-eight of
this chapter notwithstanding, no interest shall be paid thereon.

19. Environmental remediation insurance credit. (a) Allowance of cre-
dit. A taxpayer shall be allowed a credit, to be computed as provided in
section twenty-three of this chapter, against the tax imposed by this
article.

(b) Application of credit. The credit allowed under this subdivision
for any taxable year shall not reduce the tax due for such year to less
than the fixed dollar minimum amount prescribed in paragraph (d) of
subdivision one of section two hundred ten of this article. However, if
the amount of credits allowed under this subdivision for any taxable
year reduces the tax to such amount or if the taxpayer otherwise pays tax
based on the fixed dollar minimum amount, any amount of credit thus not
deductible in such taxable year shall be treated as an overpayment of
tax to be credited or refunded in accordance with the provisions of
section one thousand eighty-six of this chapter. Provided, however, the
provisions of subsection (c) of section one thousand eighty-eight of
this chapter notwithstanding, no interest shall be paid thereon.

20. Empire State film production credit. (a) Allowance of credit. A
taxpayer who is eligible pursuant to section twenty-four of this chapter
shall be allowed a credit to be computed as provided in such section
twenty-four against the tax imposed by this article.

S. 6359--D          100    A. 8559--D
21. Security training tax credit. (a) Allowance of credit. A taxpayer shall be allowed a credit, to be computed as provided in section twenty-six of this chapter, against the tax imposed by this article.

(b) Application of credit. The credit allowed under this subdivision for any taxable year shall not reduce the tax due for such year to less than the fixed dollar minimum amount prescribed in paragraph (d) of subdivision one of section two hundred ten of this chapter. However, if the amount of credits allowed under this subdivision for any taxable year reduces the tax to such amount or if the taxpayer otherwise pays tax based on the fixed dollar minimum amount, any amount of credit thus not deductible in such taxable year shall be treated as an overpayment of tax to be credited or refunded in accordance with the provisions of section one thousand eighty-six of this chapter. Provided, however, the provisions of subsection (c) of section one thousand eighty-eight of this chapter notwithstanding, no interest shall be paid thereon.

22. Conservation easement tax credit. (a) Credit allowed. In the case of a taxpayer who owns land that is subject to a conservation easement held by a public or private conservation agency, there shall be allowed a credit for twenty-five percent of the allowable school district, county and town real property taxes on such land. In no such case shall the credit allowed under this subdivision in combination with any other credit for such school district, county and town real property taxes under this section exceed such taxes.

(b) Conservation easement. For purposes of this subdivision, the term "conservation easement" means a perpetual and permanent conservation easement as defined in article forty-nine of the environmental conservation law that serves to protect open space, scenic, natural resources, biodiversity, agricultural, watershed and/or historic preservation resources. Any conservation easement for which a tax credit is claimed under this subdivision shall be filed with the department of environmental conservation, as provided for in article forty-nine of the environmental conservation law and such conservation easement shall comply with the provisions of title three of such article, and the provisions of subdivision (h) of section 170 of the internal revenue code. Dedications of land for open space through the execution of conservation easements for the purpose of fulfilling density requirements to obtain subdivision or building permits shall not be considered a conservation easement under this subdivision.

(c) Land. For purposes of this subdivision, the term "land" means a fee simple title to real property located in this state, with or without improvements thereon; rights of way; water and riparian rights; easements; privileges and all other rights or interests of any land or description in, relating to or connected with real property, excluding buildings, structures, or improvements.

(d) Public or private conservation agency. For purposes of this subdivision, the term "public or private conservation agency" means any state, local, or federal governmental body; or any private not-for-profit charitable corporation or trust which is authorized to do business in the state of New York, is organized and operated to protect land for natural resources, conservation or historic preservation purposes, is exempt from federal income taxation under section 501(c)(3) of the internal revenue code, and has the power to acquire, hold and maintain land and/or interests in land for such purposes.

(e) Credit limitation. The amount of the credit that may be claimed by a taxpayer pursuant to this subsection shall not exceed five thousand dollars in any given year.

(f) Application of the credit. The credit allowed under this subdivision for any taxable year shall not reduce the tax due for such year to less than the fixed dollar minimum amount prescribed in paragraph (d) of subdivision one of section two hundred ten of this article. However, if the amount of the credit allowed under this subdivision for any taxable
year reduces the tax to such amount or if the taxpayer otherwise pays tax based on the fixed dollar minimum amount, any amount of the credit thus not deductible in such taxable year shall be treated as an overpayment of tax to be credited or refunded in accordance with the provisions of subsection (c) of section one thousand eighty-eight of this chapter, except that, no interest shall be paid thereon.

23. Empire state commercial production credit. (a) Allowance of credit. A taxpayer that is eligible pursuant to provisions of section twenty-eight of this chapter shall be allowed a credit to be computed as provided in such section against the tax imposed by this article. 

(b) Application of credit. The credit allowed under this subdivision for any taxable year shall not reduce the tax due for such year to less than the fixed dollar minimum amount prescribed in paragraph (d) of subdivision one of section two hundred ten of this article. Provided, however, that if the amount of the credit allowable under this subdivision for any taxable year reduces the tax to such amount or if the taxpayer otherwise pays tax based on the fixed dollar minimum amount, fifty percent of the excess shall be treated as an overpayment of tax to be credited or refunded in accordance with the provisions of section one thousand eighty-six of this chapter. Provided, however, the provisions of subsection (c) of section one thousand eighty-eight of this chapter notwithstanding, no interest shall be paid thereon. The balance of such credit not credited or refunded in such taxable year may be carried over to the immediately succeeding taxable year and may be deducted from the taxpayer's tax for such year. The excess, if any, of the amount of credit over the tax for such succeeding year shall be treated as an overpayment of tax to be credited or refunded in accordance with the provisions of section one thousand eighty-six of this chapter. Provided, however, the provisions of subsection (c) of section one thousand eighty-eight of this chapter notwithstanding, no interest shall be paid thereon.

(c) Expiration of credit. The credit allowed under this subdivision shall not be applicable to taxable years beginning on or after December thirty-first, two thousand seventeen.

24. Biofuel production credit. (a) General. A taxpayer shall be allowed a credit, to be computed as provided in section twenty-eight of this chapter added as part X of chapter sixty-two of the laws of two thousand six, against the tax imposed by this article. The credit allowed under this subdivision for any taxable year shall not reduce the tax due for such year to less than the fixed dollar minimum amount prescribed in paragraph (d) of subdivision one of section two hundred ten of this article. However, if the amount of credit allowed under this subdivision for any taxable year reduces the tax to such amount or if the taxpayer otherwise pays tax based on the fixed dollar minimum amount, any amount of credit thus not deductible in such taxable year shall be treated as an overpayment of tax to be credited or refunded in accordance with the provisions of section one thousand eighty-six of this chapter. Provided, however, the provisions of subsection (c) of section one thousand eighty-eight of this chapter notwithstanding, no interest shall be paid thereon. The tax credit allowed pursuant to this section shall apply to taxable years beginning before January first, two thousand twenty.

25. Clean heating fuel credit. (a) General. A taxpayer shall be allowed a credit against the tax imposed by this article. Such credit, to be computed as hereinafter provided, shall be allowed for bioheat, used for space heating or hot water production for residential purposes within this state purchased before January first, two thousand seventeen. Such credit shall be $0.01 per percent of biodiesel per gallon of bioheat, not to exceed twenty cents per gallon, purchased by such taxpayer.

(b) Definitions. For purposes of this subdivision, the following definitions shall apply:
(i) "Biodiesel" shall mean a fuel comprised exclusively of mono-alkyl esters of long chain fatty acids derived from vegetable oils or animal fats, designated B100, which meets the specifications of American Society of Testing and Materials designation D 6751.

(ii) "Bioheat" shall mean a fuel comprised of biodiesel blended with conventional home heating oil, which meets the specifications of the American Society of Testing and Materials designation D 396 or D 975.

(c) Application of credit. The credit allowed under this subdivision for any taxable year shall not reduce the tax due for such year to less than the fixed dollar minimum amount prescribed in paragraph (d) of subdivision one of section two hundred ten of this article. However, if the amount of credit allowed under this subdivision for any taxable year reduces the tax to such amount or if the taxpayer otherwise pays tax based on the fixed dollar minimum amount, any amount of credit thus not deductible in such taxable year shall be treated as an overpayment of tax to be credited or refunded in accordance with the provisions of section one thousand eighty-six of this chapter. Provided, however, the provisions of subsection (c) of section one thousand eighty-eight of this chapter notwithstanding, no interest shall be paid thereon.

26. Credit for rehabilitation of historic properties. (a) Application of credit. (i) For taxable years beginning on or after January first, two thousand ten, and before January first, two thousand twenty, a taxpayer shall be allowed a credit as hereinafter provided, against the tax imposed by this article, in an amount equal to one hundred percent of the amount of credit allowed the taxpayer for the same taxable year with respect to a certified historic structure under subsection (c)(2) of section 47 of the internal revenue code with respect to a certified historic structure located within the state. Provided, however, the credit shall not exceed five million dollars.

(ii) For taxable years beginning on or after January first, two thousand twenty, a taxpayer shall be allowed a credit as hereinafter provided, against the tax imposed by this article, in an amount equal to thirty percent of the amount of credit allowed the taxpayer for the same taxable year with respect to a certified historic structure under subsection (c)(3) of section 47 of the internal revenue code with respect to a certified historic structure located within the state. Provided, however, the credit shall not exceed one hundred thousand dollars.

(B) If the taxpayer is a partner in a partnership or a shareholder in a New York S corporation, then the credit caps imposed in subparagraph (A) of this paragraph shall be applied at the entity level, so that the aggregate credit allowed to all the partners or shareholders of each such entity in the taxable year does not exceed the credit cap that is applicable in that taxable year.

(b) Tax credits allowed pursuant to this subdivision shall be allowed in the taxable year that the qualified rehabilitation is placed in service under section 167 of the federal internal revenue code.

(c) If the credit allowed the taxpayer pursuant to section 47 of the internal revenue code with respect to a qualified rehabilitation is recaptured pursuant to subsection (a) of section 50 of the internal revenue code, a portion of the credit allowed under this subsection must be added back in the same taxable year and in the same proportion as the federal credit.

(d) The credit allowed under this subdivision for any taxable year shall not reduce the tax due for such year to less than the amount prescribed in paragraph (d) of subdivision one of section two hundred ten of this article. However, if the amount of the credit allowed under this subdivision for any taxable year reduces the tax to such amount or if the taxpayer otherwise pays tax based on the fixed dollar minimum amount, any amount of credit thus not deductible in such taxable year shall be treated as an overpayment of tax to be recredited or refunded.
in accordance with the provisions of section one thousand eighty-six of this chapter. Provided, however, the provisions of subsection (c) of section one thousand eighty-eight of this chapter notwithstanding, no interest shall be paid thereon.

(e) To be eligible for the credit allowable under this subdivision, the rehabilitation project shall be in whole or in part located within a census tract which is identified as being at or below one hundred percent of the state median family income as calculated as of January first of each year using the most recent five year estimate from the American community survey published by the United States Census bureau.

27. Credits of New York S corporations. (a) General. Notwithstanding the provisions of this section, no carryover of credit allowable in a New York C year shall be deducted from the tax otherwise due under this article in a New York S year, and no credit allowable in a New York S year, or carryover of such credit, shall be deducted from the tax imposed by this article. However, a New York S year shall be treated as a taxable year for purposes of determining the number of taxable years to which a credit may be carried over under this section. Notwithstanding the first sentence of this subdivision, however, the credit for the special additional mortgage recording tax shall be allowed as provided in subdivision fifteen of this section, and the carryover of any such credit shall be determined without regard to whether the credit is carried from a New York C year to a New York S year or vice-versa.

29. Hire a vet credit. (a) Allowance of credit. For taxable years beginning on or after January first, two thousand fifteen and before January first, two thousand seventeen, a taxpayer shall be allowed a credit, to be computed as provided in this subdivision, against the tax imposed by this article, for hiring and employing, for not less than one year and for not less than thirty-five hours each week, a qualified veteran within the state. The taxpayer may claim the credit in the year in which the qualified veteran completes one year of employment by the taxpayer. If the taxpayer claims the credit allowed under this subdivision, the taxpayer may not use the hiring of a qualified veteran that is the basis for this credit in the basis of any other credit allowed under this article.

(b) Qualified veteran. A qualified veteran is an individual:

1. who served on active duty in the United States army, navy, air force, marine corps, coast guard or the reserves thereof, or who served in active military service of the United States as a member of the army national guard, air national guard, New York guard or New York naval militia; who was released from active duty by general or honorable discharge after September eleventh, two thousand one;

2. who commences employment by the qualified taxpayer on or after January first, two thousand fourteen, and before January first, two thousand sixteen; and

3. who certifies by signed affidavit, under penalty of perjury, that he or she has not been employed for thirty-five or more hours during any week in the one hundred eighty day period immediately prior to his or her employment by the taxpayer.

(c) Employer prohibition. An employer shall not discharge an employee and hire a qualifying veteran solely for the purpose of qualifying for this credit.

(d) Amount of credit. The amount of the credit shall be ten percent of the total amount of wages paid to the qualified veteran during the veteran's first full year of employment. Provided, however, that, if the qualified veteran is a disabled veteran, as defined in paragraph (b) of subdivision one of section eighty-five of the civil service law, the amount of the credit shall be fifteen percent of the total amount of wages paid to the qualified veteran during the veteran's first full year of employment. The credit allowed pursuant to this subdivision shall not exceed in any taxable year, five thousand dollars for any qualified veteran.
veteran and fifteen thousand dollars for any qualified veteran who is a disabled veteran.

(e) Carryover. The credit allowed under this subdivision for any taxable year shall not reduce the tax due for such year to less than the amount prescribed in paragraph (d) of subdivision one of section two hundred ten of this article. However, if the amount of credit allowable under this subdivision for any taxable year reduces the tax to such amount or if the taxpayer otherwise pays tax based on the fixed dollar minimum amount, any amount of credit not deductible in such taxable year may be carried over to the following three years and may be deducted from the taxpayer’s tax for such year or years.

30. Alternative fuels and electric vehicle recharging property credit.
(a) General. A taxpayer shall be allowed a credit, to be computed as hereinafter provided, against the tax imposed by this article for alternative fuel vehicle refueling and electric vehicle recharging property placed in service during the taxable year.
(b) Alternative fuel vehicle refueling property and electric vehicle recharging property. The credit under this subdivision for alternative fuel vehicle refueling property and electric vehicle recharging property shall equal for each installation of property the lesser of five thousand dollars or fifty percent of the cost of any such property:
(i) which is located in this state;
(ii) which constitutes alternative fuel vehicle refueling property or electric vehicle recharging property; and
(iii) for which none of the cost has been paid for from the proceeds of grants, including grants from the New York state energy research and development authority or the New York power authority.
(c) Definitions. (i) The term "alternative fuel vehicle refueling property" means all of the equipment needed to dispense any fuel at least eighty-five percent of the volume of which consists of one or more of the following: natural gas, liquified natural gas, liquified petroleum, or hydrogen.
(ii) The term "electric vehicle recharging property" means all of the equipment needed to convey electric power from the electric grid or another power source to an onboard vehicle energy storage system.
(d) Carryovers. In no event shall the credit under this subdivision be allowed in an amount which will reduce the tax payable to less than the amount prescribed in paragraph (d) of subdivision one of section two hundred ten of this article. Provided, however, that if the amount of credit allowable under this subdivision for any taxable year reduces the tax to such amount or if the taxpayer otherwise pays tax based on the fixed dollar minimum amount, any amount of credit not deductible in such taxable year may be carried over to the following year or years and may be deducted from the taxpayer’s tax for such year or years.
(e) Credit recapture. If, at any time before the end of its recovery period, alternative fuel vehicle refueling or electric vehicle recharging property ceases to be qualified, a recapture amount must be added back in the year in which such cessation occurs.
(i) Alternative fuel vehicle refueling property or electric vehicle recharging property ceases to be qualified if:
(I) the property no longer qualifies as alternative fuel vehicle refueling property or electric vehicle recharging property; or
(II) fifty percent or more of the use of the property in a taxable year is other than in a trade or business in this state; or
(III) the taxpayer receiving the credit under this subdivision sells or disposes of the property and knows or has reason to know that the property will be used in a manner described in clauses (I) and (II) of this subparagraph.
(ii) Recapture amount. The recapture amount is equal to the credit allowable under this subdivision multiplied by a fraction, the numerator of which is the total recovery period for the property minus the number
of recovery years prior to, but not including, the recapture year, and the denominator of which is the total recovery period.

(f) Termination. The credit allowed by paragraph (b) of this subdivision shall not apply in taxable years beginning after December thirty-first, two thousand seventeen.

31. Excelsior jobs program credit. (a) Allowance of credit. A taxpayer will be allowed a credit, to be computed as provided in section thirty-one of this chapter, against the tax imposed by this article.

(b) Application of credit. The credit allowed under this subdivision for any taxable year may not reduce the tax due for such year to less than the amount prescribed in paragraph (d) of subdivision one of section two hundred ten of this article. However, if the amount of credit allowed under this subdivision for any taxable year reduces the tax to such amount or if the taxpayer otherwise pays tax based on the fixed dollar minimum amount, any amount of credit thus not deductible in such taxable year will be treated as an overpayment of tax to be credited or refunded in accordance with the provisions of section one thousand eighty-six of this chapter. Provided, however, the provisions of subsection (c) of section one thousand eighty-eight of this chapter notwithstanding, no interest will be paid thereon.

32. Empire state film post production credit. (a) Allowance of credit. A taxpayer who is eligible pursuant to section thirty-one of this chapter shall be allowed a credit to be computed as provided in such section thirty-one against the tax imposed by this article.

(b) Application of credit. The credit allowed under this subdivision for any taxable year shall not reduce the tax due for such year to less than the amount prescribed in paragraph (d) of subdivision one of section two hundred ten of this article. Provided, however, that if the amount of the credit allowable under this subdivision for any taxable year reduces the tax to such amount or if the taxpayer otherwise pays tax based on the fixed dollar minimum amount, fifty percent of the excess shall be treated as an overpayment of tax to be credited or refunded in accordance with the provisions of section one thousand eighty-six of this chapter. Provided, however, the provisions of subsection (c) of section one thousand eighty-eight of this chapter notwithstanding, no interest shall be paid thereon. The balance of such credit not credited or refunded in such taxable year may be a carryover to the immediately succeeding taxable year and may be deducted from the taxpayer’s tax for such year. The excess, if any, of the amount of the credit over the tax for such succeeding year shall be treated as an overpayment of tax to be credited or refunded in accordance with the provisions of section one thousand eighty-six of this chapter. Provided, however, the provisions of subsection (c) of section one thousand eighty-eight of this chapter notwithstanding, no interest shall be paid thereon.

33. Temporary deferral nonrefundable payout credit. (a) Allowance of credit. A taxpayer shall be allowed a credit, to be computed as provided in subdivision one of section thirty-four of this chapter, against the tax imposed by this article.

(b) Application of credit. The credit allowed under this subdivision for any taxable year shall not reduce the tax due for that year to less than the amount prescribed in paragraph (d) of subdivision one of section two hundred ten of this article. However, if the amount of credit allowed under this subdivision for any taxable year reduces the tax to such amount or if the taxpayer otherwise pays tax based on the fixed dollar minimum amount, any amount of credit thus not deductible in such taxable year may be carried over to the following year or years and may be deducted from the taxpayer’s tax for such year or years.

34. Temporary deferral refundable payout credit. (a) Allowance of credit. A taxpayer shall be allowed a credit, to be computed as provided in subdivision two of section thirty-four of this chapter, against the tax imposed by this article.
(b) Application of credit. In no event shall the credit under this subdivision be allowed in an amount which will reduce the tax to less than the amount prescribed in paragraph (d) of subdivision one of section two hundred ten of this article. If, however, the amount of credit allowed under this subdivision for any taxable year reduces the tax to such amount or if the taxpayer otherwise pays tax based on the fixed dollar minimum amount, any amount of credit not deductible in such taxable year shall be treated as an overpayment of tax to be refunded in accordance with the provisions of section one thousand eighty-six of this chapter, provided however, that no interest shall be paid thereon.

35. Economic transformation and facility redevelopment program tax credit. (a) Allowance of credit. A taxpayer shall be allowed a credit, to be computed as provided in section thirty-five of this chapter, against the tax imposed by this article.

(b) Application of credit. The credit allowed under this subdivision for any taxable year may not reduce the tax due for such year to less than the amount prescribed in paragraph (d) of subdivision one of section two hundred ten of this article. However, if the amount of credit allowed under this subdivision for any taxable year reduces the tax to such amount or if the taxpayer otherwise pays tax based on the fixed dollar minimum amount, any amount of credit not deductible in such taxable year shall be treated as an overpayment of tax to be credited or refunded in accordance with the provisions of section one thousand eighty-six of this chapter. Provided, however, the provisions of subsection (c) of section one thousand eighty-eight of this chapter notwithstanding, no interest will be paid thereon.

36. New York youth works tax credit. (a) A taxpayer that has been certified by the commissioner of labor as a qualified employer pursuant to section twenty-five-a of the labor law shall be allowed a credit against the tax imposed by this article equal to (i) five hundred dollars per month for up to six months for each qualified employee the employer employs in a full-time job or two hundred fifty dollars per month for up to six months for each qualified employee the employer employs in a part-time job of at least twenty hours per week or ten hours per week when the qualified employee is enrolled in high school full-time, (ii) one thousand dollars for each qualified employee who is employed for at least an additional six months by the qualified employer in a full-time job or five hundred dollars for each qualified employee who is employed for at least an additional six months by the qualified employer in a part-time job of at least twenty hours per week or ten hours per week when the qualified employee is enrolled in high school full-time, and (iii) an additional one thousand dollars for each qualified employee who is employed for at least an additional year after the first year of the employee's employment by the qualified employer in a full-time job or five hundred dollars for each qualified employee who is employed for at least an additional year after the first year of the employee's employment by the qualified employer in a part-time job of at least twenty hours per week or ten hours per week when the qualified employee is enrolled in high school full-time. For purposes of this subdivision, the term "qualified employee" shall have the same meaning as set forth in subdivision (b) of section twenty-five-a of the labor law. The portion of the credit described in subparagraph (i) of this paragraph shall be allowed for the taxable year in which the wages are paid to the qualified employee, and the portion of the credit described in subparagraph (ii) of this paragraph shall be allowed in the taxable year in which the additional six month period ends.

(b) The credit allowed under this subdivision for any taxable year may not reduce the tax due for that year to less than the amount prescribed in paragraph (d) of subdivision one of section two hundred ten of this article. However, if the amount of the credit allowed under this subdi-
this subdivision, purchases of new vehicles that are initially manufactured to be accessible for individuals with disabilities and for which there is no comparable make and model that does not include the equipment necessary to provide accessibility to individuals with disabilities, the credit shall be ten thousand dollars per vehicle.

(b) Definition. The term "accessible by individuals with disabilities" shall, for the purposes of this subdivision, refer to a vehicle that complies with federal regulations promulgated pursuant to the Americans with Disabilities Act applicable to vans under twenty-two feet in length, by the federal Department of Transportation, in Code of Federal Regulations, title 49, parts 37 and 38, and by the federal Architecture and Transportation Barriers Compliance Board, in Code of Federal Regulations, title 49, section 1192.23, and the Federal Motor Vehicle Safety Standards, Code of Federal Regulations, title 49, part 57.

(c) Application of credit. In no event shall the credit allowed under this subdivision for any taxable year reduce the tax due for such year.
to less than the amount prescribed in paragraph (d) of subdivision one
of section two hundred ten of this article. However, if the amount of
credit allowed under this subdivision for any taxable year reduces the
tax to such amount or if the taxpayer otherwise pays tax based on the
fixed dollar minimum amount, any amount of credit thus not deductible in
such taxable year shall be carried over to the following year or years,
and may be deducted from the taxpayer’s tax for such year or years.

39. Beer production credit. A taxpayer shall be allowed a credit, to
be computed as provided in section thirty-seven of this chapter, against
the tax imposed by this article. In no event shall the credit allowed
under this subdivision for any taxable year reduce the tax due for such
year to less than the amount prescribed in paragraph (d) of subdivision
one of section two hundred ten of this article. However, if the amount
of credit allowed under this subdivision for any taxable year reduces
the tax to such amount or if the taxpayer otherwise pays tax based on
the fixed dollar minimum amount, any amount of credit thus not deduct-
ible in such taxable year shall be treated as an overpayment of tax to
be credited or refunded in accordance with the provisions of section one
thousand eighty-six of this chapter. Provided, however, the provisions
of subsection (c) of section one thousand eighty-eight of this chapter
notwithstanding, no interest shall be paid thereon.

40. Minimum wage reimbursement credit. (a) Allowance of credit. A
taxpayer shall be allowed a credit, to be computed as provided in
section thirty-eight of this chapter, against the tax imposed by this
article.

(b) Application of credit. The credit allowed under this subdivision
for any taxable year may not reduce the tax due for such year to less
than the amount prescribed in paragraph (d) of subdivision one of
section two hundred ten of this article. However, if the amount of cred-
it allowed under this subdivision for any taxable year reduces the tax
to such amount or if the taxpayer otherwise pays tax based on the fixed
dollar minimum amount, any amount of credit thus not deductible in such
taxable year will be treated as an overpayment of tax to be credited or
refunded in accordance with the provisions of section one thousand
eighty-six of this chapter. Provided, however, the provisions of
subsection (c) of section one thousand eighty-eight of this chapter
notwithstanding, no interest shall be paid thereon.

41. The tax-free NY area tax elimination credit. A taxpayer shall be
allowed a credit to be computed as provided in section forty of this
chapter, against the tax imposed by this article. Unless the taxpayer
has a tax-free NY area allocation factor of one hundred percent, the
credit allowed under this subdivision for any taxable year shall not
reduce the tax due for such year to less than the amount prescribed in
paragraph (d) of subdivision one of section two hundred ten of this
article. However, any amount of credit not deductible in such taxable
year shall be treated as an overpayment of tax to be credited or
refunded in accordance with the provisions of section one thousand
eighty-six of this chapter. Provided, however, the provisions of
subsection (c) of section one thousand eighty-eight of this chapter
notwithstanding, no interest shall be paid thereon.

42. Alternative base credit. (a) If the tax imposed on a taxpayer by
subdivision one of section two hundred nine of this article is the
amount prescribed in paragraph (b) of subdivision one of section two
hundred ten of this article, the taxpayer shall be allowed a credit
against the tax imposed under this article equal to the amount of tax
paid to another state computed on a tax base identical to the tax base
prescribed in such paragraph (b). If the tax imposed on a taxpayer by
subdivision one of section two hundred nine of this article is the
amount prescribed in paragraph (d) of subdivision one of section two
hundred ten of this article, the taxpayer shall be allowed a credit
against the tax imposed under this article equal to the amount of tax
paid to another state computed on a tax base identical to the tax base
prescribed in such paragraph (d).

(b) In no event shall the credit allowed under this subdivision for
any taxable year reduce the tax due for such year to less than the
amount prescribed in paragraph (d) of subdivision one of section two
hundred ten of this article. However, if the amount of credit allowed
under this subdivision for any taxable year reduces the tax to such
amount or if the taxpayer otherwise pays tax based on the fixed dollar
minimum amount, any amount of credit thus not deductible in such taxable
year shall be carried over to the following year or years, and may be
deducted from the taxpayer’s tax for such year or years.

43. Real property tax credit for manufacturers. (a) A qualified New
York manufacturer, as defined in subparagraph (vi) of paragraph (a) of
subdivision one of section two hundred ten of this article, will be
allowed a credit equal to twenty percent of the real property tax it
paid during the taxable year for real property owned by such manufactur-
er in New York which was principally used during the taxable year for
manufacturing to the extent not deducted in determining entire net
income. This credit will not be allowed if the real property taxes that
are the basis for this credit are included in the calculation of another
credit claimed by the taxpayer.

(b) (1) For purposes of this subdivision, the term real property tax
means a charge imposed upon real property by or on behalf of a county,
city, town, village or school district for municipal or school district
purposes, provided that the charge is levied for the general public
welfare by the proper taxing authorities at a like rate against all
property over which such authorities have jurisdiction, and provided
that where taxes are levied pursuant to article eighteen or nineteen of
the real property tax law, the property must have been taxed at the rate
determined for the class in which it is contained, as provided by such
article eighteen or nineteen, whichever is applicable. The term real
property tax does not include a charge for local benefits, including any
portion of that charge that is properly allocated to the costs attribut-
able to maintenance or interest, when (i) the property subject to the
charge is limited to the property that benefits from the charge, or (ii)
the amount of the charge is determined by the benefit to the property
assessed, or (iii) the improvement for which the charge is assessed
tends to increase the property value.

(2) In addition, the term real property tax includes taxes paid by the
taxpayer upon real property principally used during the taxable year by
the taxpayer in manufacturing where the taxpayer leases such real prop-
erty from an unrelated third party if the following conditions are
satisfied: (i) the tax must be paid by the taxpayer as lessee pursuant
to explicit requirements in a written lease, and (ii) the taxpayer as
lessee has paid such taxes directly to the taxing authority and has
received a written receipt for payment of taxes from the taxing authori-
ty. In the case of a combined group that constitutes a qualified New
York manufacturer, the conditions in the preceding sentence are satis-
fied if one corporation in the combined group is the lessee and another
corporation in the combined group makes the payments to the taxing
authority.

(3) The term real property tax does not include a payment made by the
taxpayer in connection with an agreement for the payment in lieu of
S. 6359--D                         111                         A. 8559--D
taxes on real property, whether such property is owned or leased by the
taxpayer.

(4) The real property taxes must be paid by the taxpayer in the year
such taxes become a lien on the real property.

(c) Credit recapture. Where a qualified New York manufacturer’s real
property taxes which were the basis for the allowance of the credit
provided for under this subdivision are subsequently reduced as a result of a final order in any proceeding under article seven of the real property tax law or other provision of law, the taxpayer shall add back, in the taxable year in which such final order is issued, the excess of (1) the amount of credit originally allowed for a taxable year over (2) the amount of credit determined based upon the reduced real property taxes. If such final order reduces real property taxes for more than one year, the taxpayer must determine how much of such reduction is attributable to each year covered by such final order and calculate the amount of credit which is required by this subdivision to be recaptured for each year based on such reduction.

(d) The credit allowed under this subdivision for any taxable year shall not reduce the tax due for such year to less than twenty-five dollars.

44. The tax-free NY area excise tax on telecommunication services credit. A taxpayer that is a business or owner of a business that is located in a tax-free NY area approved pursuant to article twenty-one of the economic development law shall be allowed a credit equal to the excise tax on telecommunication services imposed by section one hundred eighty-six-e of this chapter and passed through to such business during the taxable year to the extent not otherwise deducted in computing entire net income under this article. However, any amount of credit not deductible in such taxable year shall be treated as an overpayment of tax to be credited or refunded in accordance with the provisions of section one thousand eighty-six of this chapter. This credit may be claimed only where any tax imposed by such section one hundred eighty-six-e has been separately stated on a bill from the provider of telecommunication services and paid by such business with respect to such services rendered within a tax-free NY area during the taxable year. Unless the taxpayer has a tax-free NY area allocation factor of one hundred percent, the credit allowed under this subdivision for any taxable year shall not reduce the tax due for such year to less than the amount prescribed in paragraph (d) of subdivision one of section two hundred ten of this chapter. Provided, however, the provisions of subsection (c) of section one thousand eighty-eight of this chapter notwithstanding, no interest shall be paid thereon.

45. Order of credits. (a) Credits allowable under this article which cannot be carried over and which are not refundable shall be deducted first. The credit allowable under subdivision six of this section shall be deducted immediately after the deduction of all credits allowable under this article which cannot be carried over and which are not refundable, whether or not a portion of such credit is refundable. Credits allowable under this article which can be carried over, and carryovers of such credits, shall be deducted next after the deduction of the credit allowable under subdivision six of this section, and among such credits, those whose carryover is of limited duration shall be deducted before those whose carryover is of unlimited duration. Credits allowable under this article which are refundable (other than the credit allowable under subdivision six of this section) shall be deducted last.

46. Notwithstanding the repeal of the credit provisions contained in section two hundred ten of this article or in article thirty-two of this chapter and the enactment of this section by a chapter of the laws of two thousand fourteen:

(a) A taxpayer shall be allowed to utilize any carryforward amounts of credits to which the taxpayer was entitled as of the close of the taxable year beginning on or after January first, two thousand fourteen and before January first, two thousand fifteen, other than the carryforward amount of the minimum tax credit provided under subdivision thirteen of section two hundred ten, as that subdivision was in effect on December thirty-first, two thousand fourteen.

(b) A taxpayer shall be required in a taxable year beginning on or
after January first, two thousand fifteen, to recapture all or a portion
of a credit allowed under a credit provision in section two hundred ten
or article thirty-two of this chapter for a taxable year beginning prior
to January first, two thousand fifteen if recapture would have been
required under such credit provision.

§ 18. The tax law is amended by adding a new section 210-C to read as
follows:

§ 210-C. Combined reports. 1. Tax. The tax on a combined report shall
be the highest of (i) the combined business income base multiplied by
the tax rate specified in paragraph (a) of subdivision one of section
two hundred ten of this article; (ii) the combined capital base multi-
plied by the tax rate specified in paragraph (b) of subdivision one of
section two hundred ten of this article, but not exceeding the limita-
tion provided for in that paragraph (b); or (iii) the fixed dollar mini-
imum that is attributable to the designated agent of the combined group.
In addition, the tax on a combined report shall include the fixed dollar
minimum tax specified in paragraph (d) of subdivision one of section two
hundred ten of this article for each member of the combined group, other
than the designated agent, that is a taxpayer.

(b) The combined business income base is the amount of the combined
business income of the combined group that is apportioned to the state,
reduced by any net operating loss deduction for the combined group. The
combined capital base is the amount of the combined capital of the
combined group that is apportioned to the state.

2. Combined reports required. (a) Except as provided in paragraph (c)
of this subdivision, any taxpayer (i) which owns or controls either
directly or indirectly more than fifty percent of the voting power of
the capital stock of one or more other corporations, or (ii) more than
fifty percent of the voting power of the capital stock of which is owned
or controlled either directly or indirectly by one or more other corpo-
rints, or (iii) more than fifty percent of the voting power of the
capital stock of which and the capital stock of one or more other corpo-
rints, is owned or controlled, directly or indirectly, by the same
interests, and (iv) that is engaged in a unitary business with those
corporations (hereinafter referred to as "related corporations"), shall
make a combined report with those other corporations.

(b) A corporation required to make a combined report within the mean-
ing of this section shall also include (i) a captive REIT and a captive
RIC if the captive REIT or captive RIC is not required to be included in
a combined report under article thirty-three of this chapter; (ii) a
combinable captive insurance company; and (iii) an alien corporation
that satisfies the conditions in paragraph (a) of this subdivision if
(I) under any provision of the internal revenue code, that corporation
is treated as a "domestic corporation" as defined in section seven thou-
s. 6359--D 113 A. 8559--D
limited partner interest in a limited partnership that is doing business, employing capital, owning or leasing property, maintaining an office in this state, or deriving receipts from activity in this state, and none of the corporation's related corporations are subject to tax under this article, such corporation shall not be required or permitted to file a combined report under this section with such related corporations.

(d) A combined report shall be filed by the designated agent of the combined group as determined under subdivision seven of this section.

3. Commonly owned group election. (a) Subject to the provisions of paragraph (c) of subdivision two of this section, a taxpayer may elect to treat as its combined group all corporations that meet the ownership requirements described in paragraph (a) of subdivision two of this section (such corporations collectively referred to in this subdivision as the "commonly owned group"). If that election is made, the commonly owned group shall calculate the combined business income, combined capital, and fixed dollar minimum bases of all members of the group in accordance with paragraph four of this subdivision, whether or not that business income or business capital is from a single unitary business.

(b) The election under this subdivision shall be made on an original, timely filed return of the combined group. Any corporation entering a commonly owned group subsequent to the year of election shall be included in the combined group and is considered to have waived any objection to its inclusion in the combined group.

(c) The election shall be irrevocable, and binding for and applicable to the taxable year for which it is made and for the next six taxable years. The election will automatically be renewed for another seven taxable years after it has been in effect for seven taxable years unless it is affirmatively revoked. The revocation shall be made on an original, timely filed return for the first taxable year after the completion of a seven year period for which an election under this subdivision was in place. In the case of a revocation, a new election under this subdivision shall not be permitted in any of the immediately following three taxable years. In determining the seven and three year periods described in this paragraph, short taxable years shall not be considered or counted.

4. Computation of tax bases on a combined report. (a) In computing the tax bases for a combined report, the combined group shall generally be treated as a single corporation, except as otherwise provided, and subject to any regulations or guidance issued by the commissioner or the department.

(b)(i) In computing combined business income, all intercorporate dividends shall be eliminated, and all other intercorporate transactions shall be deferred in a manner similar to the United States Treasury regulations relating to intercompany transactions under section fifteen hundred two of the internal revenue code.

(ii) In computing combined capital, all intercorporate stockholdings, intercorporate bills, intercorporate notes receivable and payable, intercorporate accounts receivable and payable, and other intercorporate indebtedness, shall be eliminated.

(c) Qualification for credits, including any limitations thereon, shall be determined separately for each of the members of the combined group, and shall not be determined on a combined group basis, except as otherwise provided. However, the credits shall be applied against the combined tax of the group. To the extent that a provision of section two hundred ten-B of this article limits a credit to the fixed dollar minimum amount prescribed in paragraph (d) of subdivision one of section two hundred ten of this article, such fixed dollar minimum amount shall be the fixed dollar minimum amount that is attributable to the designated agent of the combined group.

(d)(i) A net operating loss deduction is allowed in computing the
combined business income base. Such deduction may reduce the tax on the combined business income base to the higher of the tax on the combined capital base or the fixed dollar minimum amount that is attributable to the designated agent of the combined group. A combined net operating loss deduction is equal to the amount of combined net operating loss or losses from one or more taxable years that are carried forward to a particular income year. A combined net operating loss is the combined business loss incurred in a particular taxable year multiplied by the combined apportionment factor for that year determined as provided in subdivision five of this section.

(ii) The combined net operating loss deduction and combined net operating loss are also subject to the provisions contained in clauses one through six of subparagraph (ix) of paragraph (a) of subdivision one of section two hundred ten of this article.

(iii) In the case of a corporation that files a combined report, either in the year the net operating loss is incurred or in the year in which a deduction is claimed on account of the loss, the combined net operating loss deduction is determined as if the combined group is a single corporation and, to the extent possible and not otherwise inconsistent with this subdivision, is subject to the same limitations that would apply for federal income tax purposes under the internal revenue code and the code of federal regulations as if such corporation had filed for such taxable year a consolidated federal income tax return with the same corporations included in the combined report. If a corporation files a combined report, regardless of whether it filed a separate return or consolidated return for federal income tax purposes, the net operating loss and net operating loss deduction for the combined group must be computed as if the corporation had filed a consolidated return for the same corporations for federal income tax purposes.

(iv) In general, any net operating loss carryover from a year in which a combined report was filed shall be based on the combined net operating loss of the group of corporations filing such report. The portion of the combined loss attributable to any member of the group that files a separate report for a succeeding taxable year will be an amount bearing the same relation to the combined loss as the net operating loss of such corporation bears to the total net operating loss of all members of the group having such losses to the extent that they are taken into account in computing the combined net operating loss.

(d-1) A net operating loss conversion subtraction is allowed in computing the combined business income base, as provided in subparagraph (viii) of paragraph (a) of subdivision one of section two hundred ten of this article. Such subtraction may reduce the tax on the combined business income base to the higher of the tax on the combined capital base or the fixed dollar minimum amount that is attributable to the designated agent of the combined group.

(e) Any election made pursuant to paragraph (b) of subdivision six, and paragraphs (b) and (c) of subdivision six-a of section two hundred eight of this article shall apply to all members of the combined group.

(f)(i) In the case of a captive REIT or captive RIC required under this section to be included in a combined report, entire net income shall be computed as required under subdivision five (in the case of a captive REIT) or subdivision seven (in the case of a captive RIC) of section two hundred nine of this article. However, the deduction under the internal revenue code for dividends paid by the captive REIT or captive RIC to any member of the affiliated group that includes the corporation that directly or indirectly owns over fifty percent of the voting stock of the captive REIT or captive RIC shall not be allowed. For purposes of this subparagraph, the term "affiliated group" means "affiliated group" as defined in section fifteen hundred four of the internal revenue code, but without regard to the exceptions provided for in subsection (b) of that section.
(ii) In the case of a combinable captive insurance company required under this section to be included in a combined report, entire net income shall be computed as required by subdivision nine of section two hundred eight of this article.

(g) If more than one member of a combined group is eligible for any of the modifications described in paragraphs (r), (s) and (t) of subdivision nine of section two hundred eight of this article, all such members must utilize the same modification.

5. Apportionment on a combined report. (a) In determining the apportionment factor for a combined report, the receipts, net income, net gains and other items of all members of the combined group, whether or not they are a taxpayer, are included and intercorporate receipts, income and gains are eliminated. Receipts, net income, net gains and other items are sourced, and the amounts allowed in the apportionment factor are determined, as provided in section two hundred ten-A of this article.

(b) An election made to apportion income and gains from qualifying financial instruments pursuant to subparagraph one of paragraph (a) of subdivision five of section two hundred ten-A of this article shall apply to all members of the combined group.

6. Liability of combined group members. Every member of the combined group that is subject to tax under this article shall be jointly and severally liable for the tax due pursuant to a combined report.

7. Designated agent. Each combined group shall have one designated agent, which shall be a taxpayer. The designated agent is the parent corporation of the combined group. If there is no such parent corporation, or the parent corporation is not a taxpayer, then another member of the combined group that is a taxpayer may be appointed as the designated agent. Only the designated agent may act on behalf of the members of the combined group for matters relating to the combined report.

S. 6359--D 116  A. 8559--D

§ 19. Subdivisions 2-a, 3, 4 and 5 of section 211 of the tax law, subdivision 2-a as added and subdivision 5 as amended by chapter 817 of the laws of 1987, subdivision 3 as amended by chapter 770 of the laws of 1992, subdivision 4 as amended by section 2 of part T of chapter 407 of the laws of 1999, the opening paragraph and the second undesignated paragraph of paragraph (a) of subdivision 4 as amended by section 1, subparagraph 4 of paragraph (a) of subdivision 4 as amended by section 2, and subparagraph 5 of paragraph (a) of subdivision 4 as amended by section 3 of part J of chapter 60 of the laws of 2007, subparagraph 6 of paragraph (a) of subdivision 4 as added by section 3 of part FF1 of chapter 57 of the laws of 2008, subparagraph 7 of paragraph (a) of subdivision 4 as added by section 2 and subparagraph 1 of paragraph (b) of subdivision 4 as amended by section 3 of part E1 of chapter 57 of the laws of 2009, are amended to read as follows:

2-a. The [tax commissioner] commissioner may prescribe regulations and instructions requiring returns of information to be made and filed in conjunction with the reports required to be filed pursuant to [section two hundred eleven] this article, relating to payments made to shareholders owning, directly or indirectly, individually or in the aggregate, more than fifty percent of the issued capital stock of the taxpayer, where such payments are treated as payments of interest in the computation of entire net income [or minimum taxable income] reported on such reports.

3. If the amount of taxable income [or alternative minimum taxable income] for any year of any taxpayer (including any taxpayer which has elected to be taxed under subchapter S of chapter one of the internal revenue code), as returned to the United States treasury department is changed or corrected by the commissioner of internal revenue or other officer of the United States or other competent authority, or where a renegotiation of a contract or subcontract with the United States results in a change in taxable income [or alternative minimum taxable
income], such taxpayer shall report such changed or corrected taxable income [or alternative minimum taxable income], or the results of such renegotiation, within ninety days (or one hundred twenty days, in the case of a taxpayer making a combined report under this article for such year) after the final determination of such change or correction or renegotiation, or as required by the commissioner, and shall concede the accuracy of such determination or state wherein it is erroneous. The allowance of a tentative carryback adjustment based upon a net operating loss carryback or net capital loss carryback pursuant to section sixty-four hundred eleven of the internal revenue code, as amended, shall be treated as a final determination for purposes of this subdivision. Any taxpayer filing an amended return with such department shall also file an amended report with the commissioner.

4. (a) Combined reports permitted or required. Any taxpayer, which owns or controls either directly or indirectly substantially all the capital stock of one or more other corporations, or substantially all the capital stock of which is owned or controlled either directly or indirectly by one or more other corporations or by interests which own or control either directly or indirectly substantially all the capital stock of one or more other corporations, (hereinafter referred to in this paragraph as "related corporations"), shall make a combined report covering any related corporations if there are substantial intercorporate transactions among the related corporations, regardless of the transfer price for such intercorporate transactions. It is not necessary that there be substantial intercorporate transactions between any one corporation and every other related corporation. It is necessary, however, that there be substantial intercorporate transactions between the taxpayer and a related corporation or collectively, a group of such related corporations. The report shall set forth such information as the commissioner may require, subject to the provisions of subparagraphs one through five of this paragraph.

In determining whether there are substantial intercorporate transactions, the commissioner shall consider and evaluate all activities and transactions of the taxpayer and its related corporations. Activities and transactions that will be considered include, but are not limited to: (i) manufacturing, acquiring goods or property, or performing services, for related corporations; (ii) selling goods acquired from related corporations; (iii) financing sales of related corporations; (iv) performing related customer services using common facilities and employees for related corporations; (v) incurring expenses that benefit, directly or indirectly, one or more related corporations, and (vi) transferring assets, including such assets as accounts receivable, patents or trademarks from one or more related corporations.

(1) Any corporation which owns or controls either directly or indirectly substantially all the capital stock of a DISC not exempt from tax under paragraph (i) of subdivision nine of section two hundred eighty of this article shall be allowed, at the election of such corporation, to make a report on a combined basis covering such DISC, but the failure of such corporation to make such election shall not prohibit the commissioner from requiring a combined report covering such corporation and such DISC.

(2) No taxpayer may be permitted to make a report on a combined basis covering any such other corporations where such taxpayer or any such other corporation allocates in accordance with clause (A) of subparagraph seven of paragraph (a) of subdivision three of section two hundred ten of this article (relating to aviation corporations) and such taxpayer or any such other corporation does not so allocate, unless such taxpayer or such other corporation is a qualified air freight forwarder with respect to such other corporation or such taxpayer, respectively,
and all taxpayers included on such combined report elect, by filing such combined report, to have such qualified air freight forwarder so included.

(ii) A corporation is a qualified air freight forwarder with respect to another corporation:

(A) if it owns or controls either directly or indirectly all of the capital stock of such other corporation, or if all of its capital stock is owned or controlled either directly or indirectly by such other corporation, or if all of the capital stock of both corporations is owned or controlled either directly or indirectly by the same interests,

(B) if it is principally engaged in the business of air freight forwarding, and

(C) if its air freight forwarding business is carried on principally with the airline or airlines operated by such other corporation.

(3) No taxpayer may be permitted to make a report on a combined basis covering any such other corporations where such taxpayer or any such other corporation allocates in accordance with subparagraph eight of paragraph (a) of subdivision three of section two hundred ten of this article (relating to railroad and trucking corporations) and such taxpayer or any such other corporation does not so allocate.

(4) Except as provided in the first undesignated paragraph of this paragraph, no combined report covering any corporation shall be required unless the commissioner deems such a report necessary, because of inter-company transactions or some agreement, understanding, arrangement or transaction referred to in subdivision five of this section, in order properly to reflect the tax liability under this article.

(5) A corporation organized under the laws of a country other than the United States shall not be required or permitted to make a report on a combined basis.

(6) (i) For purposes of this subparagraph, the term "closest controlling stockholder" means the corporation that indirectly owns or controls over fifty percent of the voting stock of a captive REIT or captive RIC, is subject to tax under this article, article thirty-two or thirty-three of this chapter or otherwise required to be included in a combined return or report under this article, article thirty-two or thirty-three of this chapter, and is the fewest tiers of corporations away in the ownership structure from the captive REIT or captive RIC. The commissioner is authorized to prescribe by regulation or published guidance the criteria for determining the closest controlling stockholder.

(ii) A captive REIT or a captive RIC must be included in a combined report with the corporation that directly owns or controls over fifty percent of the voting stock of the captive REIT or captive RIC if that corporation is subject to tax or required to be included in a combined report under this article.

(iii) If over fifty percent of the voting stock of a captive REIT or captive RIC is not directly owned or controlled by a corporation that is subject to tax or required to be included in a combined report under this article, then the captive REIT or captive RIC must be included in a combined return or report with the corporation that is the closest controlling stockholder of the captive REIT or captive RIC. If the closest controlling stockholder of the captive REIT or captive RIC is subject to tax or otherwise required to be included in a combined report under this article, then the captive REIT or captive RIC must be included in a combined report under this article.

(iv) If the corporation that directly owns or controls the voting stock of the captive REIT or captive RIC is described in subparagraph two, three or five of this paragraph as a corporation not permitted to make a combined report, then the provisions in clause (iii) of this subparagraph must be applied to determine the corporation in whose combined return or report the captive REIT or captive RIC should be included. If, under clause (iii) of this subparagraph, the corporation
that is the closest controlling stockholder of the captive REIT or captive RIC is described in subparagraph two, three or five of this paragraph as a corporation not permitted to make a combined return, then that corporation is deemed to not be in the ownership structure of the captive REIT or captive RIC, and the closest controlling stockholder will be determined without regard to that corporation.

(v) If a captive REIT owns the stock of a qualified REIT subsidiary (as defined in paragraph two of subsection (i) of section eight hundred fifty-six of the internal revenue code), then the qualified REIT subsidiary must be included in a combined report with the captive REIT.

(vi) If a captive REIT or a captive RIC is required under this subparagraph to be included in a combined report with another corporation, and that other corporation is also required to be included in a combined report with another related corporation or corporations under this paragraph, then the captive REIT or the captive RIC must be included in that combined report with those corporations.

(vii) If a captive REIT or a captive RIC is not required to be included in a combined report with another corporation under clause (ii) or (iii) of this subparagraph, or in a combined return under the provisions of either subparagraph (v) of paragraph two of subsection (f) of section fourteen hundred sixty-two or paragraph four of subdivision (f) of section fifteen hundred fifteen of this chapter, then the captive REIT or captive RIC is subject to the opening provisions of this paragraph and the provisions of subparagraph four of this paragraph. The captive REIT or captive RIC must be included in a combined report under this article with another corporation if either the substantial intercorporate transactions requirement in the opening provisions of this paragraph or the intercompany transactions or agreement, understanding, arrangement or transaction requirement of subparagraph four of this paragraph is satisfied and more than fifty percent of the voting stock of the captive REIT or the captive RIC and substantially all of the capital stock of that other corporation are owned and controlled, directly or indirectly, by the same corporation.

(7) (i) For purposes of this subparagraph, the term "closest controlling stockholder" means the corporation that indirectly owns or controls over fifty percent of the voting stock of an overcapitalized captive insurance company, is subject to tax under this article or article thirty-two of this chapter, or is otherwise required to be included in a combined return or report under this article or article thirty-two of this chapter; and is the fewest tiers of corporations away in the ownership structure from the overcapitalized captive insurance company. The commissioner is authorized to prescribe by regulation or published guidance the criteria for determining the closest controlling stockholder.

(ii) An overcapitalized captive insurance company must be included in a combined report with the corporation that directly owns or controls over fifty percent of the voting stock of the overcapitalized captive insurance company if that corporation is subject to tax or required to be included in a combined report under this article.

(iii) If over fifty percent of the voting stock of an overcapitalized captive insurance company is not directly owned or controlled by a corporation that is subject to tax or required to be included in a combined report under this article, then the overcapitalized captive insurance company must be included in a combined return or report with the corporation that is the closest controlling stockholder of the overcapitalized captive insurance company. If the closest controlling stockholder of the overcapitalized captive insurance company is subject to tax or otherwise required to be included in a combined report under this article, then the overcapitalized captive insurance company must be included in a combined report under this article.

(iv) If the corporation that directly owns or controls the voting stock of the overcapitalized captive insurance company is described in
subparagraph two, three, or five of this paragraph as a corporation not permitted to make a combined report, then the provisions in clause (iii) of this subparagraph must be applied to determine the corporation in whose combined return or report the overcapitalized captive insurance company should be included. If, under clause (iii) of this subparagraph, the corporation that is the closest controlling stockholder of the overcapitalized captive insurance company is described in subparagraph two, three or five of this paragraph as a corporation not permitted to make a

combined return, then that corporation is deemed not to be in the ownership structure of the overcapitalized captive insurance company, and the closest controlling stockholder will be determined without regard to that corporation.

(v) If an overcapitalized captive insurance company is required under this subparagraph to be included in a combined report with another corporation, and that other corporation is also required to be included in a combined report with another related corporation or corporations under this paragraph, then the overcapitalized captive insurance company must be included in that combined report with those corporations.

(vi) If an overcapitalized captive insurance company is not required to be included in a combined report with another corporation under clause (ii) or (iii) of this subparagraph, or in a combined return under the provisions of subparagraph (v) of paragraph two of subsection (f) of section fourteen hundred sixty-two of this chapter, then the overcapitalized captive insurance company is subject to the opening provisions of this paragraph and the provisions of subparagraph four of this paragraph. The overcapitalized captive insurance company must be included in a combined report under this article with another corporation if either the substantial intercorporate transactions requirement in the opening provisions of this paragraph or the inter-company transactions or agreement, understanding, arrangement or transaction requirement of subparagraph four of this paragraph is satisfied, and both more than fifty percent of the voting stock of the overcapitalized captive insurance company and substantially all of the capital stock of that other corporation are owned and controlled, directly or indirectly, by the same corporation.

(b) Computation. (1) Tax. (i) In the case of a combined report the tax shall be measured by the combined entire net income, combined minimum taxable income, combined pre-nineteen hundred ninety minimum taxable income or combined capital, of all the corporations included in the report, including any captive REIT, captive RIC or overcapitalized captive insurance company; provided, however, in no event shall the tax measured by combined capital exceed the limitation provided for in paragraph (b) of subdivision one of section two hundred ten of this article.

(ii) In the case of a captive REIT or captive RIC required under this subdivision to be included in a combined report, entire net income must be computed as required under subdivision five (in the case of a captive REIT) or subdivision seven (in the case of a captive RIC) of section two hundred nine of this article. However, the deduction under the internal revenue code for dividends paid by the captive REIT or captive RIC to any member of the affiliated group that includes the corporation that directly or indirectly owns over fifty percent of the voting stock of the captive REIT or captive RIC shall not be allowed for taxable years beginning on or after January first, two thousand eight. The term "affiliated group" means "affiliated group" as defined in section fifteen hundred forty of the internal revenue code, but without regard to the exceptions provided for in subsection (b) of that section.

(iii) In the case of an overcapitalized captive insurance company required under this subdivision to be included in a combined report, entire net income must be computed as required by subdivision nine of section two hundred eight of this article.

(2) Tax bases. In computing combined entire net income, combined mini-
mum taxable income or combined pre-nineteen hundred ninety minimum taxable income intercorporate dividends shall be eliminated in computing combined business and investment capital intercorporate stockholdings.

and intercorporate bills, notes and accounts receivable and payable and other intercorporate indebtedness shall be eliminated and in computing combined subsidiary capital intercorporate stockholdings shall be eliminated, provided, however, that intercorporate dividends from a DISC or a former DISC not exempt from tax under paragraph (i) of subdivision nine of section two hundred eight of this article which are taxable as business income under this article shall not be eliminated.

(3) Air freight forwarders: allocation. Notwithstanding any provision of law to the contrary, where a combined report includes a qualified air freight forwarder and a corporation described in subparagraph seven of subdivision two of section two hundred ten of this chapter (relating to aviation corporations), in computing the combined business allocation percentage such subparagraph seven shall be applied with respect to such qualified air freight forwarder. For provisions relating to combined reports, see section two hundred ten-C of this article.

5. In case it shall appear to the tax commissioner that any agreement, understanding or arrangement exists between the taxpayer and any other corporation or any person or firm, whereby the activity, business, income or capital of the taxpayer within the state is improperly or inaccurately reflected, the tax commissioner is authorized and empowered, in its discretion and in such manner as it may determine, to adjust items of income, deductions and capital, and to eliminate assets in computing any allocation apportionment percentage provided only that any income directly traceable thereto be also excluded from entire net income, minimum taxable income or combined pre-nineteen hundred ninety minimum taxable income, so as equitably to determine the tax. Where (a) any taxpayer conducts its activity or business under any agreement, arrangement or understanding in such manner as either directly or indirectly to benefit its members or stockholders, or any of them, or any person or persons directly or indirectly interested in such activity or business, by entering into any transaction at more or less than a fair price which, but for such agreement, arrangement or understanding, might have been paid or received therefor, or (b) any taxpayer, a substantial portion of whose capital stock is owned either directly or indirectly by another corporation, enters into any transaction with such other corporation on such terms as to create an improper loss or net income, the tax commissioner may include in the entire net income the minimum taxable income or pre-nineteen hundred ninety minimum taxable income of the taxpayer the fair profits which, but for such agreement, arrangement or understanding, the taxpayer might have derived from such transaction.

Where any taxpayer owns, directly or indirectly, more than fifty percent of the capital stock of another corporation subject to tax under section fifteen hundred two-a of this chapter and fifty percent or less of whose gross receipts for the taxable year consist of premiums, the commissioner may include in the entire net income of the taxpayer, as a deemed distribution, the amount of the net income of the other corporation that is in excess of its net premium income.

§ 19-a. Subdivision 13 of section 211 of the tax law is REPEALED.

§ 20. Subdivision 11 of section 2 of the tax law, as added by section 1 of part E-1 of chapter 57 of the laws of 2009, is amended to read as follows:

11. The term "overcapitalized combinable captive insurance company" means an entity that is treated as an association taxable as a corporation under the internal revenue code (a) more than fifty percent of
the voting stock of which is owned or controlled, directly or indirectly, by a single entity that is treated as an association taxable as a corporation under the internal revenue code and not exempt from federal income tax; (b) that is licensed as a captive insurance company under the laws of this state or another jurisdiction; (c) whose business includes providing, directly and indirectly, insurance or reinsurance covering the risks of its parent and/or members of its affiliated group; and (d) fifty percent or less of whose gross receipts for the taxable year consist of premiums from arrangements that constitute insurance for federal income tax purposes. For purposes of this subdivision, "affiliated group" has the same meaning as that term is given in section 1504 of the internal revenue code, except that the term "common parent corporation" in that section is deemed to mean any person, as defined in section 7701 of the internal revenue code and references to "at least eighty percent" in section 1504 of the internal revenue code are to be read as "fifty percent or more;" section 1504 of the internal revenue code is to be read without regard to the exclusions provided for in subsection (b) of that section; "premiums" has the same meaning as that term is given in paragraph one of subdivision (c) of section fifteen hundred ten of this chapter, except that it includes consideration for annuity contracts and excludes any part of the consideration for insurance, reinsurance or annuity contracts that do not provide bona fide insurance, reinsurance or annuity benefits; and "gross receipts" includes the amounts included in gross receipts for purposes of section 501(c) (15) of the internal revenue code, except that those amounts also include all premiums as defined in this subdivision.

§ 21. Subdivision (a) of section 1500 of the tax law, as separately amended by section 1 of part B-1 and section 8 of part E-1 of chapter 57 of the laws of 2009, is amended to read as follows:
(a) The term "insurance corporation" includes a corporation, association, joint stock company or association, person, society, aggregation or partnership, by whatever name known, doing an insurance business, and, notwithstanding the provisions of section fifteen hundred twelve of this article, shall include (1) a risk retention group as defined in subsection (n) of section five thousand nine hundred two of the insurance law, (2) the state insurance fund and (3) a corporation, association, joint stock company or association, person, society, aggregation or partnership doing an insurance business as a member of the New York insurance exchange described in section six thousand two hundred one of the insurance law. The definition of the "state insurance fund" contained in this subdivision shall be limited in its effect to the provisions of this article and the related provisions of this chapter and shall have no force and effect other than with respect to such provisions. The term "insurance corporation" shall also include a captive insurance company doing a captive insurance business, as defined in subsections (c) and (b), respectively, of section seven thousand two of the insurance law; provided, however, "insurance corporation" shall not include the metropolitan transportation authority, or a public benefit corporation or not-for-profit corporation formed by a city with a population of one million or more pursuant to subsection (a) of section seven thousand five of the insurance law, each of which is expressly exempt from the payment of fees, taxes or assessments, whether state or local; and provided further "insurance corporation" does not include any overcapitalized combinable captive insurance company. The term "insurance corporation" shall also include an unauthorized insurer operating from an office within the state, pursuant to paragraph five of S. 6359--D 123 A. 8559--D

subsection (b) of section one thousand one hundred one and subsection (i) of section two thousand one hundred seventeen of the insurance law. The term "insurance corporation" also includes a health maintenance organization required to obtain a certificate of authority under article forty-four of the public health law.
§ 22. Subdivision (a) of section 1502-b of the tax law, as amended by section 9 of part E-1 of chapter 57 of the laws of 2009 and as further amended by section 104 of part A of chapter 62 of the laws of 2011, is amended to read as follows:

(a) In lieu of the taxes and tax surcharge imposed by sections fifteen hundred one, fifteen hundred two-a, fifteen hundred five-a, and fifteen hundred ten of this article, every captive insurance company licensed by the superintendent of financial services pursuant to the provisions of article seventy of the insurance law, other than the metropolitan transportation authority and a public benefit corporation or not-for-profit corporation formed by a city with a population of one million or more pursuant to subsection (a) of section seven thousand five of the insurance law, each of which is expressly exempt from the payment of fees, taxes or assessments whether state or local, and other than [an overcapitalized] combinable captive insurance company, shall, for the privilege of exercising its corporate franchise, pay a tax on (1) all gross direct premiums, less return premiums thereon, written on risks located or resident in this state and (2) all assumed reinsurance premiums, less return premiums thereon, written on risks located or resident in this state. The rate of the tax imposed on gross direct premiums shall be four-tenths of one percent on all or any part of the first twenty million dollars of premiums, three-tenths of one percent on all or any part of the second twenty million dollars of premiums, two-tenths of one percent on all or any part of the third twenty million dollars of premiums, and seventy-five thousandths of one percent on each dollar of premiums thereafter. The rate of the tax on assumed reinsurance premiums shall be two hundred twenty-five thousandths of one percent on all or any part of the first twenty million dollars of premiums, one hundred and fifty thousandths of one percent on all or any part of the second twenty million dollars of premiums, fifty thousandths of one percent on all or any part of the third twenty million dollars of premiums and twenty-five thousandths of one percent on each dollar of premiums thereafter. The tax imposed by this section shall be equal to the greater of (i) the sum of the tax imposed on gross direct premiums and the tax imposed on assumed reinsurance premiums or (ii) five thousand dollars.

§ 23. Paragraph 4 of subdivision (f) of section 1515 of the tax law, as amended by section 16 of part FF-1 of chapter 57 of the laws of 2008, is amended to read as follows:

(4)(i) For purposes of this paragraph, the term "closest controlling stockholder" means the corporation that indirectly owns or controls over fifty percent of the voting stock of a captive REIT or captive RIC, is subject to tax under section fifteen hundred one of this article[7] or article nine-A [or article thirty-two] of this chapter or required to be included in a combined return or report under this article[7] or article nine-A [or article thirty-two] of this chapter, and is the fewest tiers of corporations away in the ownership structure from the captive REIT or captive RIC. The commissioner is authorized to prescribe by regulation or published guidance the criteria for determining the closest controlling stockholder.

(ii) A captive REIT or a captive RIC must be included in a combined return with the corporation that directly owns or controls over fifty percent of the voting stock of a captive REIT or captive RIC if that corporation is a life insurance corporation and is subject to tax or required to be included in a combined return under this article.

(iii) If over fifty percent of the voting stock of a captive REIT or captive RIC is not directly owned or controlled by a life insurance corporation that is subject to tax or required to be included in a combined return under this article, then the captive REIT or captive RIC must be included in a combined report or return with the corporation that is the closest controlling stockholder of the captive REIT or captive RIC. If and the closest controlling stockholder of the captive
REIT or captive RIC is a life insurance corporation that is subject to tax or required to be included in a combined return under this article, then the captive REIT or captive RIC must be included in a combined return with the closest controlling stockholder under this article.

(iv) If a captive REIT owns the stock of a qualified REIT subsidiary (as defined in paragraph two of subsection (i) of section eighty-six of the internal revenue code) and the captive REIT is required to be included in a combined return under subparagraphs (ii) or (iii) of this paragraph, then the qualified REIT subsidiary must be included in any combined return required to be made by the captive REIT that owns the stock of the qualified REIT subsidiary.

§ 24. Subdivisions (a), (b) and (c) of section 12 of the tax law, as added by chapter 615 of the laws of 1998, are amended to read as follows:

(a) For purposes of subdivision (b) of this section, the term "person" shall mean a corporation, joint stock company or association, insurance corporation, or banking corporation, as such terms are defined in section one hundred eighty-three, one hundred eighty-four, or one hundred eighty-six, or in article nine-A[thirty-two] or thirty-three of this chapter, imposing tax on such entities.

(b) No person shall be subject to the taxes imposed under section one hundred eighty-three, one hundred eighty-four or one hundred eighty-six, or article nine-A[thirty-two] or thirty-three of this chapter, solely by reason of (1) having its advertising stored on a server or other computer equipment located in this state (other than a server or other computer equipment owned or leased by such person), or (2) having its advertising disseminated or displayed on the Internet by an individual or entity subject to tax under section one hundred eighty-three, one hundred eighty-four or one hundred eighty-six, or article nine-A, twenty-two[thirty-two] or thirty-three of this chapter.

(c) A person, as such term is defined in subdivision (a) of section twelve of this chapter, shall not be deemed to be a vendor, for purposes of article twenty-eight of this chapter, solely by reason of (1) having its advertising stored on a server or other computer equipment located in this state (other than a server or other computer equipment owned or leased by such person), or (2) having its advertising disseminated or displayed on the Internet by an individual or entity subject to tax under section one hundred eighty-three, one hundred eighty-four or one hundred eighty-six, or article nine-A, twenty-two[thirty-two] or thirty-three of this chapter.

§ 25. Paragraph 1 of subdivision (a) of section 14 of the tax law, as amended by section 3 of part V1 of chapter 109 of the laws of 2006, is amended to read as follows:

(1) except as provided in paragraphs one-a and one-b of this subdivision, for purposes of section one hundred eighty-seven-j and articles nine-A, twenty-two[thirty-two] and thirty-three of this chapter, for each of the taxable years within the "business tax benefit period," which period shall consist of (A) in the case of a business enterprise with a test date occurring on or before December thirty-first, two thousand one, the first fifteen taxable years beginning on or after January first, two thousand one, (B) in the case of a business enterprise with a test date occurring on or after January first, two thousand two, but prior to April first, two thousand five, the fifteen taxable years next following the business enterprise's test year, and (C) in the case of a business enterprise which is first certified under article eighteen-B of
the ten taxable years starting with the taxable year in which the business enterprise's first date of certification under article eighteen-B of the general municipal law occurs, but only with respect to each of such business tax benefit period years for which the employment test is met,

§ 26. Subdivision (f) of section 14 of the tax law, as amended by section 10 of part CC of chapter 85 of the laws of 2002, is amended to read as follows:

(f) Taxable year. The term "taxable year" means the taxable year of the business enterprise under section one hundred eighty-three, one hundred eighty-four, one hundred eighty-five or former section one hundred eighty-six of article nine, or under article nine-A, twenty-eight, thirty-two or thirty-three of this chapter. If a business enterprise does not have a taxable year because it is exempt from taxation or otherwise not required to file a return under any of such sections of article nine or under article nine-A, twenty-eight, thirty-two or thirty-three, then the term "taxable year" means (i) the business enterprise's federal taxable year, or, (ii) if the enterprise does not have a federal taxable year, the calendar year.

§ 27. Paragraph 1 of subdivision (i) of section 14 of the tax law, as amended by section 5 of part A of chapter 63 of the laws of 2005, is amended to read as follows:

(1) for purposes of section one hundred eighty-seven-j of article nine, and articles nine-A, twenty-eight, thirty-two or thirty-three of this chapter, on the first day of the taxable year during which revocation of its certification under article eighteen-B of the general municipal law occurs, and

§ 28. Paragraphs 1 and 2 of subdivision (j) of section 14 of the tax law, as amended by section 10 of part CC of chapter 85 of the laws of 2002, are amended to read as follows:

(1) A new business shall include any corporation, except a corporation which is substantially similar in operation and in ownership to a business entity (or entities) taxable, or previously taxable, under section one hundred eighty-three, one hundred eighty-four, one hundred eighty-five or one hundred eighty-six of article nine; article nine-A, article thirty-two or thirty-three of this chapter; article twenty-three of this chapter or which would have been subject to tax under such article twenty-three (as such article was in effect on January first, nineteen hundred eighty), article thirty-two of this chapter or which would have been subject to tax under such article thirty-two (as such article was in effect on December thirty-first, two thousand fourteen) or the income (or losses) of which is (or was) includable under article twenty-two of this chapter.

(2) For purposes of article twenty-two of this chapter, an individual who is either a sole proprietor or a member of a partnership shall qualify as an owner of a new business unless the business of which the individual is an owner is substantially similar in operation and in ownership to a business entity taxable, or previously taxable, under section one hundred eighty-three, one hundred eighty-four, one hundred eighty-five or one hundred eighty-six of article nine; article nine-A, article thirty-two or article thirty-three of this chapter or which would have been subject to tax under such article twenty-three (as such article was in effect on January first, nineteen hundred eighty); article thirty-two of this chapter or which would have been subject to tax under such article thirty-two as such article was in effect on December thirty-first, two thousand fourteen or the income (or losses) of which is (or was) includable under article twenty-two.

§ 29. Clauses (i) and (ii) of subparagraph (A) of paragraph 4 of subdivision (j) of section 14 of the tax law, as added by section 5 of part A of chapter 63 of the laws of 2005, are amended to read as
follows:

(i) Notwithstanding paragraphs one and two of this subdivision, a new business shall include any corporation which is identical in operation and ownership to a business entity (or entities) taxable under section one hundred eighty-three, one hundred eighty-four or one hundred eighty-five of article nine; article nine-A[article thirty-two] or thirty-three of this chapter or the income (or losses) of which is includable under article twenty-two of this chapter, provided such corporation and such business entity or entities are operating in different counties in the state.

(ii) Notwithstanding paragraphs one and two of this subdivision, an individual who is either a sole proprietor or a member of a partnership shall qualify as an owner of a new business if the business of which the individual is an owner is identical in operation and in ownership to a business entity (or entities) taxable under section one hundred eighty-three, one hundred eighty-four or one hundred eighty-five of article nine; article nine-A[article thirty-two] or thirty-three of this chapter or the income (or losses) of which is includable under article twenty-two of this chapter, provided such corporation and such business entity or entities are operating in different counties in the state.

§ 30. Subparagraph (B) of paragraph 4 of subdivision (j) of section 14 of the tax law, as amended by chapter 161 of the laws of 2005, is amended to read as follows:

(B) Notwithstanding any provision of this subdivision to the contrary and notwithstanding subdivision c of section eighteen of part CC of chapter eighty-five of the laws of two thousand two, a corporation or partnership, which was first certified under article eighteen-B of the general municipal law before August first, two thousand two, has a base period of zero years or zero employment for its base period, and is similar in operation and in ownership to a business entity or entities taxable, or previously taxable, under sections specified in paragraph one or two of this subdivision or which would have been subject to tax under article twenty-three of this chapter (as such article was in effect on January first, nineteen hundred eighty) or which would have been subject to tax under article thirty-two of this chapter (as such article was in effect on December thirty-first, two thousand fourteen), or the income or losses of which is or was includable under article twenty-two of this chapter shall not be deemed a new business if it was not formed for a valid business purpose, as such term is defined in clause (D) of subparagraph one of paragraph (o) of subdivision nine of section two hundred ten, subsections (bb) and (cc) of section six hundred six, subdivision (z) of section eleven hundred fifteen, subsections (o) and (p) of section fourteen hundred fifty-six, and subdivisions (r) and (s) of section fifteen hundred eleven of this chapter. In addition, if the designation of an area as an empire zone benefits.
nine of the general municipal law was not amended to extend the effective date of such designation so that the designations of all empire zones pursuant to article eighteen-B of the general municipal law have expired, all references to empire zones in the provisions of this chapter listed in the previous sentence shall be read as meaning areas designated as empire zones on the day immediately preceding the day on which such designation expired.

§ 32. Subdivisions (a) and (h) of section 15 of the tax law, as amended by section 5 of part A of chapter 63 of the laws of 2005, are amended to read as follows:

(a) Allowance of credit. A taxpayer which is a qualified empire zone enterprise (QEZE), or which is a sole proprietor of a QEZE or a member of a partnership which is a QEZE, and which is subject to tax under article nine-A, twenty-two[thirty-two] or thirty-three of this chapter, shall be allowed a credit against such tax, pursuant to the provisions referenced in subdivision (h) of this section, for eligible real property taxes.

(h) Definitions and cross-references. For definitions of terms used in this section see section fourteen of this article. For application of the credit provided for in this section, see the following provisions of this chapter:

1. Article 9: Section 187-j.
3. Article 22: Section 606: subsections (i) and (bb).
4. [Article 32: Section 1456: subsection (o).]
5. Article 33: Section 1511: subdivision (r).

§ 33. Subdivision (a) of section 16 of the tax law, as added by section 2 of part GG of chapter 63 of the laws of 2000, is amended to read as follows:

(a) Allowance of credit. A taxpayer which is a qualified empire zone enterprise (QEZE), or which is a sole proprietor of a QEZE or a member of a partnership which is a QEZE, and which is subject to tax under article nine-A, twenty-two[thirty-two] or thirty-three of this chapter, shall be allowed a credit against such tax, pursuant to the provisions referenced in subdivision (g) of this section, to be computed as hereinafter provided.

§ 34. Paragraph 1, clause (ii) of subparagraph (B) of paragraph 2, and subparagraph (A) of paragraph 3 of subdivision (f) of section 16 of the tax law, as amended by section 14 of part CC of chapter 85 of the laws of 2002, are amended to read as follows:

(i) General. The tax factor shall be, in the case of article nine-A of this chapter, the [larger of the amounts] amount of tax determined for the taxable year under paragraphs paragraph (a) and (c) of subdivision one of section two hundred ten of such article. The tax factor shall be, in the case of article twenty-two of this chapter, the tax determined for the taxable year under subsections (a) through (d) of section six hundred one of such article. [The tax factor shall be, in the case of article thirty-two of this chapter, the larger of the amounts of tax determined for the taxable year under subsection (a) and paragraph two of subsection (b) of section fourteen hundred fifty-five of such article.] The tax factor shall be, in the case of article thirty-three of this chapter, the larger of the amounts of tax determined for the taxable year under paragraphs one and three of subdivision (a) of section fifteen hundred two of such article.

(ii) For purposes of article nine-A, twenty-two[thirty-two or thirty-three] of this chapter, the term "partner's income from the partnership" means partnership items of income, gain, loss and deduction, and New York modifications thereto, entering into [entire net] business income[minimum taxable income, alternative entire net income or entire net income plus compensation] and the term "partner's entire income" means [entire net] business income[minimum taxable income, alternative}
entire net income or entire net income plus compensation,] allocated within the state. **For purposes of article thirty-three of this chapter,** the term "partner's income from the partnership" means partnership items of income, gain, loss and deduction, and New York modifications thereto, entering into entire net income or entire net income plus compensation and the term "partner's entire income" means entire net income, or entire net income plus compensation, allocated within the state. For purposes of article twenty-two of this chapter, the term "partner's income from the partnership" means partnership items of income, gain, loss and deduction, and New York modifications thereto, entering into New York adjusted gross income, and the term "partner's entire income" means New York adjusted gross income.

(A) Where the taxpayer is a qualified empire zone enterprise and is required or permitted to make a return or report on a combined basis under article nine-A[,—thirty-two] or article thirty-three of this chapter, the taxpayer's tax factor shall be the amount determined in paragraph one of this subdivision which is attributable to the income of the qualified empire zone enterprise. Such attribution shall be made in accordance with the ratio of the qualified empire zone enterprise's income allocated within the state to the combined group's income, or in accordance with such other methods as the commissioner may prescribe as providing an apportionment which reasonably reflects the portion of the combined group's tax attributable to the income of the qualified empire zone enterprise. In no event may the ratio so determined exceed 1.0.

S. 6359--D  129                        A. 8559--D

§ 35. Subdivision (g) of section 16 of the tax law, as added by section 2 of part GG of chapter 63 of the laws of 2000, is amended to read as follows:

(g) Definitions and cross-references. For definitions of terms used in this section see sections fourteen and fifteen of this article. For application of the credit provided for in this section, see the following provisions of this chapter:

2. Article 22: Section 606: subsections (i) and (cc).
3. [Article 32: Section 1456: subsection (p)].

§ 36. Paragraph 1 of subdivision (b) of section 17 of the tax law, as added by section 43 of part S1 of chapter 57 of the laws of 2009, is amended to read as follows:

1. The empire zones tax benefits report must contain the following information about the empire zone tax credits claimed under articles nine, nine-A, twenty-two[,—thirty-two] and thirty-three of this chapter during the previous calendar year:

2. (A) the name of each taxpayer claiming a credit; and
3. (B) the amount of each credit earned by each taxpayer.

§ 37. Subdivisions (a) and (d) of section 18 of the tax law, as added by section 2 of part CC of chapter 63 of the laws of 2000, are amended to read as follows:

3. (a) Allowance of credit. A taxpayer subject to tax under article nine-A, twenty-two[,—thirty-two] or thirty-three of this chapter shall be allowed a credit against such tax, pursuant to the provisions referenced in subdivision (d) of this section, with respect to the ownership of eligible low-income buildings for which an eligibility statement has been issued by the commissioner of housing and community renewal. The amount of the credit shall be the credit amount for each such building allocated by such commissioner as provided in article two-A of the public housing law. The credit amount shall be allowed for each of the ten taxable years in the credit period, and any reduction in first-year credit as provided in subdivision two of section twenty-two of such law shall be allowed in the eleventh taxable year.

4. (d) Cross-references. For application of the credit provided for in this section, see the following provisions of this chapter:
§ 38. Subparagraph (A) of paragraph 1 of subdivision (a) and subdivision (f) of section 19 of the tax law, as added by section 2 of part II of chapter 63 of the laws of 2000, are amended to read as follows:

(A) Green building credit. A taxpayer subject to tax under article nine, nine-A, twenty-two, thirty-two or thirty-three of this chapter shall be allowed a green building credit against such tax, pursuant to the provisions referenced in subdivision (f) of this section. Provided, however, no credit shall be allowed under this section unless the taxpayer has complied with the applicable requirements of paragraph two of subdivision (d) of this section (relating to reports to DEC). The amount of the credit shall be the sum of the credit components specified in paragraphs two through seven of this subdivision. Provided, however, the amount of each such credit component shall not exceed the limit set forth in the initial credit component certificate obtained pursuant to subdivision (c) of this section. In the determination of such credit components, no cost paid or incurred by the taxpayer shall be the basis for more than one such component.

(f) Cross-references. For application of the credit provided for in this section, see the following provisions of this chapter:

(1) Article nine: Section one hundred eighty-seven-d;
(2) Article nine-A: Subdivision [thirty-one] sixteen of section two hundred ten [ten] ten-B;
(3) Article twenty-two: Subsections (i) and (y) of section six hundred six;
(4) [Article thirty-two: Subsection (m) of section fourteen hundred fifty-six;
{5}] Article thirty-three: Subdivision (o) of section fifteen hundred eleven.

§ 39. Paragraphs 1 and 5 of subdivision (a) of section 21 of the tax law, as amended by section 1 of part H of chapter 577 of the laws of 2004, are amended to read as follows:

(1) General. A taxpayer subject to tax under article nine, nine-A, twenty-two[thirty-two] or thirty-three of this chapter shall be allowed a credit against such tax, pursuant to the provisions referenced in subdivision (f) of this section. Such credit shall be allowed with respect to a qualified site, as such term is defined in paragraph one of subdivision (b) of this section. The amount of the credit in a taxable year shall be the sum of the credit components specified in paragraphs two, three and four of this subdivision applicable in such year.

(5) Applicable percentage. For purposes of paragraphs two, three and four of this subdivision, the applicable percentage shall be twelve percent in the case of credits claimed under article nine, nine-A[thirty-two] or thirty-three of this chapter, and ten percent in the case of credits claimed under article twenty-two of this chapter, except that where at least fifty percent of the area of the qualified site relating to the credit provided for in this section is located in an environmental zone as defined in paragraph six of subdivision (b) of this section, the applicable percentage shall be increased by an additional eight percent. Provided, however, as afforded in section 27-1419 of the environmental conservation law, if the certificate of completion indicates that the qualified site has been remediated to Track 1 as that term is described in subdivision four of section 27-1415 of the environmental conservation law, the applicable percentage set forth in the first sentence of this paragraph shall be increased by an additional two percent.

§ 39-a. Subdivisions (c) and (f) of section 21 of the tax law, as added by section 1 of part H of chapter 1 of the laws of 2003, are
amended to read as follows:

(c) Qualifying property. Property which qualifies for the credit provided for under this section and also for a credit provided for (1) under either subdivision [twelve] one or subdivision [twelve-B] three of section two hundred [ten] ten-B of this chapter, or both, or (2) subsection (a) or subsection (j) of section six hundred six of this chapter, or both, (3) the credit provided for under subsection (i) of section fourteen hundred fifty-six of this chapter, or (4) the credit provided under subdivision (q) of section fifteen hundred eleven of this chapter may be the basis for either the credit provided for under this section or one of the credits enumerated in paragraph one[τ] or two[τ] three or four of this subdivision, but not both.

(f) Cross-references. For application of the credit provided for in this section, see the following provisions of this chapter:

S. 6359--D  131  A. 8559--D

(1) Article 9: Section 187-g
(2) Article 9-A: Section [210] 210-B, subdivision [33] 17
(3) Article 22: Section 606, subsections (i) and (dd)
(4) Article 32: Section 1456, subdivision (q)
(5) Article 33: Section 1511, subdivision (u).

§ 40. Paragraph 3 of subdivision (a) and paragraphs 1 and 9 of subdivision (b) of section 22 of the tax law, as amended by section 4 of part H of chapter 577 of the laws of 2004, are amended to read as follows:

(3) Developer. (i) A "developer" is a taxpayer under article nine, nine-A, twenty-two[τ] thirty-two or thirty-three of this chapter who or which either (I) has been issued a certificate of completion with respect to a qualified site or (II) has purchased or in any other way has been conveyed all or any portion of a qualified site from a taxpayer or any other party who or which has been issued a certificate of completion with respect to such site provided, such purchase or conveyance has occurred within seven years of the effective date of the certificate of completion issued with respect to such qualified site. Provided further, that the taxpayer who or which is purchasing all or any portion of a qualified site and the taxpayer or any other party who or which has been issued a certificate of completion with respect to such qualified site may not be related persons, as such term is defined in subparagraph (C) of paragraph three of subsection (b) of section four hundred sixty-five of the internal revenue code.

(ii) Where the entity to whom a certificate of completion has been issued is a partnership, or where the entity which has purchased all or any portion of a qualified site from a taxpayer who or which has been issued a certificate of completion with respect to such site within the applicable time limit is a partnership, any partner in such partnership who or which is taxable under article nine, nine-A, twenty-two[τ] thirty-two or thirty-three of this chapter shall be a developer under this paragraph. Where the entity to whom a certificate of completion has been issued is a New York S corporation, or where the entity which has purchased all or any portion of a qualified site from a taxpayer who or which has been issued a certificate of completion with respect to such site within the applicable time limit is a New York S corporation, any shareholder in such New York S corporation shall be a developer under this paragraph.

(1) Allowance of credit. A developer of a qualified site who or which is subject to tax under article nine, nine-A, twenty-two[τ] thirty-two or thirty-three of this chapter, shall be allowed a credit against such tax, pursuant to the provisions referenced in paragraph nine of this subdivision, for eligible real property taxes imposed on such site.

(9) Cross-references. For application of the credit provided for in this subdivision, see the following provisions of this chapter:

(i) Article 9: Section 187-h.
(ii) Article 9-A: Section [210] 210-B: subdivision [34] 18.
(iii) Article 22: Section 606: subsections (i) and (ee).
Article 32: Section 1456: subsection (r).

Article 33: Section 1511: subdivision (v).

§ 41. Subdivision (a) of section 23 of the tax law, as amended by section 10 of part H chapter 577 of the laws of 2004, is amended to read as follows:

(a) Allowance of credit. General. A taxpayer subject to tax under article nine, nine-A, twenty-two[.] thirty-two] or thirty-three of this chapter shall be allowed a credit against such tax, pursuant to the provisions referenced in subdivision (e) of this section. The amount of such credit shall be equal to the lesser of thirty thousand dollars or fifty percent of the premiums paid on or after the date of the brown-field site cleanup agreement executed by the taxpayer and the department of environmental conservation pursuant to section 27-1409 of the environmental conservation law by the taxpayer for environmental remediation insurance issued with respect to a qualified site.

§ 42. Subdivision (e) of section 23 of the tax law, as added by section 19 of part H of chapter 1 of the laws of 2003, is amended to read as follows:

(e) Cross-references. For application of the credit provided for in this section, see the following provisions of this chapter:

(1) Article 9: Section 187-i

(2) Article 9-A: Section [210] 210-B, subdivision [35] 19

(3) Article 22: Section 606, subsections (i) and (ff)

(4) [Article 32: Section 1456, subsection (s)]

(5) Article 33: Section 1511, subdivision (w).

§ 43. Paragraphs 1 and 2 of subdivision (a) and clause (i) of subparagraph (D) of paragraph 1 of subdivision (b) of section 25 of the tax law, as added by section 1 of part N of chapter 61 of the laws of 2005, are amended to read as follows:

(1) Every taxpayer, or person as defined in section seven thousand seven hundred one of the internal revenue code, required to file a disclosure statement with the internal revenue service pursuant to section six thousand eleven of the internal revenue code, or the regulations promulgated thereunder, related to a reportable transaction or a listed transaction, as those terms are defined in such section or regulations, must attach a duplicate of such disclosure statement to the return or report required to be filed by such taxpayer or person for the taxable year under article nine, nine-A, twenty-two[.] thirty-two] or thirty-three of this chapter, and provide such other information related to such disclosure as prescribed by the commissioner. Such disclosure shall be made notwithstanding that one member of an affiliated group, as defined by section fifteen hundred four of the internal revenue code, may file such disclosure statement with the internal revenue service on behalf of its affiliates including such taxpayer or person.

(2) Every taxpayer or such person who participates in a New York reportable transaction for a taxable year must disclose such participation with its return or report required to be filed under article nine, nine-A, twenty-two[.] thirty-two] or thirty-three of this chapter, and provide such other information related to such transaction as prescribed by the commissioner. A New York reportable transaction is a transaction that has the potential to be a tax avoidance transaction as determined by the commissioner.

(i) the list required to be maintained by such person pursuant to section six thousand one hundred twelve of the internal revenue code identifies or is required to identify a taxpayer subject to tax under article nine, nine-A, twenty-two[.] thirty-two] or thirty-three of this chapter, and

§ 44. Subdivisions (a) and (f) of section 26 of the tax law, as added by chapter 537 of the laws of 2005, are amended to read as follows:

(a) Allowance of credit. A taxpayer, which is subject to tax under
article nine, nine-A, twenty-two[, thirty-two] or thirty-three of this
chapter and which is a qualified building owner, shall be allowed a
credit against such tax. The amount of the credit allowed under this
section shall equal the sum of the number of qualified security officers
§ 45. Paragraph 3 of subdivision (a) and subdivision (c) of section 28
of the tax law, as added by section 2 of part V of chapter 62 of the
laws of 2006, are amended to read as follows:
§ 46. Subdivision (d) of section 28 of the tax law, as added by
section 1 of part X of chapter 62 of the laws of 2006, is amended to
read as follows:
§ 47. The opening paragraph of subdivision (a) and subdivisions (c)
and (g) of section 31 of the tax law, the opening paragraph of subdi-
vision (a) and subdivision (g) as amended by section 7 of part G of chap-
ter 61 of the laws of 2011, subdivision (c) as added by section 2 of
part MM of chapter 59 of the laws of 2010, are amended to read as follows:

General. A taxpayer subject to tax under section one hundred eighty-five, article nine-A, twenty-two[thirty-two] or thirty-three of this chapter shall be allowed a credit against such tax, pursuant to the provisions referenced in subdivision (g) of this section. The amount of the credit, allowable for up to ten consecutive taxable years, is the sum of the following four credit components:

(c) Election of credit. A taxpayer who or which is qualified to claim the excelsior investment tax credit component and is also qualified to claim the investment tax credit provided for under subdivision [twelve] one of section two hundred [ten,] ten-B or subsection (a) of section six hundred six[one or subsection (i) of section fourteen hundred fifty-six] of this chapter, may claim either the excelsior investment tax credit component or the investment tax credit, but not both with regard to a particular piece of property. In addition, a taxpayer who or which is qualified to claim the excelsior investment tax credit component and is also qualified to claim the brownfield tangible property credit component under section twenty-one of this article, as added by chapter one of the laws of two thousand three, may claim either the excelsior investment tax credit component or such tangible property credit component, but not both with regard to a particular piece of property. The election to claim the excelsior investment tax credit component, the investment tax credit or the brownfield tangible property credit component, with regard to the same property, is irrevocable.

(g) Cross-references. For application of the credit provided for in this section, see the following provisions of this chapter:

(1) article 9: section 187-q.
(3) article 22: section 606: subsection (qg).
(4) article 32: section 1456: subsection (u).

§ 48. Subdivision (d) of section 31 of the tax law, as added by section 12 of part Q of chapter 57 of the laws of 2010, is amended to read as follows:

(d) Cross-references. For application of the credit provided for in this section, see the following provisions of this chapter:

(2) article 22: section 606: subsection (qg).

§ 49. Subdivision 3 of section 34 of the tax law, as added by section 2 of part Y of chapter 57 of the laws of 2010, is amended to read as follows:

3. (a) For application of the temporary deferral nonrefundable payout credit, see the following provisions of this chapter:

(1) Article 9: section [187-o] 187-o
(2) Article 9-A: section [210(41)] 210-B(33)
(3) Article 22: section 606(qg)
(4) [Article 32: section 1456(v)] Article 33: section 1511(y)
[5] (b) For application of the temporary deferral refundable payout credit, see the following provisions of this chapter:

(1) Article 9: section 187-p
(2) Article 9-A: section [210(42)] 210-B(34)
(3) Article 22: section 606(rr)
(4) [Article 32: section 1456(w)] Article 33: section 1511(z)

§ 50. The opening paragraph of subdivision (a), subparagraph (C) of paragraph 2 of subdivision (e), and subdivision (f) of section 35 of the tax law, as added by section 3 of part V of chapter 61 of the laws of 2011, are amended to read as follows:

A taxpayer which is a participant or the owner of a participant in the
e economic transformation and facility redevelopment program under article
eighteen of the economic development law that is subject to tax under
section one hundred eighty-five of article nine, or article nine-A,
twenty-two[—thirty-two] or thirty-three of this chapter shall be
allowed the sum of following components against such tax, pursuant to
the provisions referenced in subdivision (f) of this section.
(C) the business entity must not be substantially similar in ownership
and operation to another taxpayer taxable or previously taxable under
section one hundred eighty-three, one hundred eighty-four or one hundred
eighty-five of article nine, former section one hundred eighty-six of
this chapter or article nine-A, twenty-two[—thirty-two] or thirty-three
of this chapter or former article thirty-two of this chapter or the
income or losses of which is or was includable under article twenty-two
of this chapter;
(f) Cross-references. For application of the credits provided for in
this section, see the following provisions of this chapter:
(1) section 185: section 187-r.
(2) article 9-A: section [210(43)] 210-B(35).
(3) article 22: section 606 (ss).
(4) [article 32: section 1456(x).
(5) ] article 33: section 1511 (aa).
§ 51. Subdivisions (a) and (e) of section 36 of the tax law, as added
by section 2 of part E of chapter 56 of the laws of 2011, are amended to
read as follows:
(a) Allowance of credit. A taxpayer subject to tax under article
nine-A, twenty-two[—thirty-two] or thirty-three of this chapter shall be
allowed a credit against such tax, pursuant to the provisions refer-
enced in subdivision (e) of this section. The amount of the credit, allowable for ten consecutive tax years, is equal to the amount deter-
mined pursuant to section four hundred twenty-five of the economic
development law.
(e) Cross-references. For application of the credit provided for in
this section, see the following provisions of this chapter:
(2) article 22: section 606, subsection (tt);
(3) [article 32: section 1456 subsection (y);
(4)] article 33, section 1511, subdivision (bb).
§ 52. Subdivision (c) of section 37 of the tax law, as added by chap-
ter 109 of the laws of 2012, is amended to read as follows:
(c) Cross-references. For application of the credit provided for in
this section, see the following provisions of this chapter:
(2) Article 22: Section 606, subdivisions (i) and (uu).
§ 52-a. Subdivision (c) of section 39 of the tax law is REPEALED.
§ 53. Paragraphs 2, 3 and 4 of subdivision (k) of section 39 of the
tax law, paragraphs 2 and 3 as added by section 2 of part A of chapter
68 of the laws of 2013, paragraph 4 as added by section 2 of part A of
chapter 68 of the laws of 2013, are amended to read as follows:
(2) Article 9: section 180, subdivision 3.
[3 Article 9: section 181, subdivision 3.]
S. 6359--D  136 A. 8559--D
(4) Article 9-A: section [210] 210-B, subdivision [47] 41 and subdivi-
sion 44.
§ 54. Subdivision 1 of section 171-a of the tax law, as amended by
section 1 of part R of chapter 60 of the laws of 2004, is amended to
read as follows:
1. All taxes, interest, penalties and fees collected or received by
the commissioner or the commissioner's duly authorized agent under arti-
cles nine (except section one hundred eighty-two thereof and except as
otherwise provided in section two hundred five thereof), nine-A,
twelve-A (except as otherwise provided in section two hundred eighty-
four-d thereof), thirteen, thirteen-A (except as otherwise provided in
(except as otherwise provided in section four hundred eighty-two thereof), twenty-one, twenty-two, twenty-six, twenty-six-B, twenty-eight (except as otherwise provided in section eleven hundred two or eleven hundred three thereof), twenty-eight-A, thirty-one (except as otherwise provided in section fourteen hundred twenty-one thereof), thirty-three and thirty-three-A of this chapter shall be deposited daily in one account with such responsible banks, banking houses or trust companies as may be designated by the comptroller, to the credit of the comptroller. Such an account may be established in one or more of such depositories. Such deposits shall be kept separate and apart from all other money in the possession of the comptroller. The comptroller shall require adequate security from all such depositories. Of the total revenue collected or received under such articles of this chapter, the comptroller shall retain in the comptroller's hands such amount as the commissioner may determine to be necessary for refunds or reimbursements under such articles of this chapter [and article ten thereof] out of which amount the comptroller shall pay any refunds or reimbursements to which taxpayers shall be entitled under the provisions of such articles of this chapter [and article ten thereof]. The commissioner and the comptroller shall maintain a system of accounts showing the amount of revenue collected or received from each of the taxes imposed by such articles. The comptroller, after reserving the amount to pay such refunds or reimbursements, shall, on or before the tenth day of each month, pay into the state treasury to the credit of the general fund all revenue deposited under this section during the preceding calendar month and remaining to the comptroller's credit on the last day of such preceding month, (i) except that the comptroller shall pay to the state department of social services that amount of overpayments of tax imposed by article twenty-two of this chapter and the interest on such amount which is certified to the comptroller by the commissioner as the amount to be credited against past-due support pursuant to subdivision six of section one hundred seventy-one of this chapter [chapter] article, (ii) and except that the comptroller shall pay to the New York state higher education services corporation and the state university of New York or the city university of New York respectively that amount of overpayments of tax imposed by article twenty-two of this chapter and the interest on such amount which is certified to the comptroller by the commissioner as the amount to be credited against the amount of defaults in repayment of guaranteed student loans and state university loans or city university loans pursuant to subdivision five of section one hundred seventy-one-d and subdivision six of section one hundred seventy-one-e of this [chapter] article, (iii) and except further that, notwithstanding any law, the comptroller shall credit to the revenue arrearage account, pursuant to section ninety-one-a of the state finance law, that amount of overpayment of tax imposed by article nine, nine-A, twenty-two, thirty, thirty-A, thirty-B, thirty-two or thirty-three of this chapter, and any interest thereon, which is certified to the comptroller by the commissioner as the amount to be credited against a past-due legally enforceable debt owed to a state agency pursuant to paragraph (a) of subdivision six of section one hundred seventy-one-f of this article, provided, however, he shall credit to the special offset fiduciary account, pursuant to section ninety-one-c of the state finance law, any such amount creditable as a liability as set forth in paragraph (b) of subdivision six of section one hundred seventy-one-f of this article, (iv) and except further that the comptroller shall pay to the city of New York that amount of overpayment of tax imposed by article nine, nine-A, twenty-two, thirty, thirty-A, thirty-B, thirty-two or thirty-three of this chapter and any interest thereon that is certified to the comptroller by the commissioner as the amount to be credited against city of New York tax warrant judgment debt pursuant to section one
§ 55. Subdivision 2 of section 171-a of the tax law, as amended by chapter 57 of the laws of 1993, is amended to read as follows:

2. Notwithstanding subdivision one of this section or any other provision of law to the contrary, the taxes imposed pursuant to sections one hundred eighty-three-a, one hundred eighty-four-a, one hundred eighty-six-b, one hundred eighty-six-c, one hundred eighty-nine-a, two hundred nine-B, fourteen hundred fifty-five-b, and fifteen hundred five-a of this chapter, reduced by an amount for administrative costs, shall be deposited to the credit of the metropolitan mass transportation operating assistance account in the mass transportation operating assistance fund, created pursuant to section eighty-eight-a of the state finance law, as such taxes are received. The amount for administrative costs shall be determined by the commissioner to represent reasonable costs of the department of taxation and finance in administering, collecting, determining and distributing such taxes. Of the total revenue collected or received under such sections of this chapter, the comptroller shall retain in his hands such amount as the commissioner may determine to be necessary for refunds or reimbursements under such sections of this chapter out of which amount the comptroller shall pay any refunds or reimbursements to which taxpayers shall be entitled under provisions of such sections. The tax commissioner and the comptroller shall maintain a system of accounts showing the amount of revenue collected or received from each of the taxes imposed by such sections.

§ 56. Paragraphs (b) and (c) of subdivision 1 of section 171-f of the tax law, as amended by chapter 81 of the laws of 1995, are amended to read as follows:

(b) "taxpayer" shall mean a corporation, association, company, partnership, estate, trust, liquidator, fiduciary or other entity or individual who or which is liable for any tax or other imposition imposed by or pursuant to article nine, nine-A, twenty-two, thirty, thirty-A, thirty-B, thirty-two, thirty-three of this chapter or article two-E of the general city law, which tax or other imposition is administered by the commissioner of taxation and finance, or who or which is under a duty to perform an act under or pursuant to such tax or imposition, excluding a state agency, a municipal corporation or a district corporation; and (c) "overpayment" shall mean an overpayment which has been requested or determined to be refunded, a refund or a reimbursement, of a tax or other imposition imposed by or pursuant to article nine, nine-A, twenty-two, thirty, thirty-A, thirty-B, thirty-two, or thirty-three of this chapter or article two-E of the general city law, which
§ 57. Subdivision 2 of section 171-f of the tax law, as added by chapter 55 of the laws of 1992, is amended to read as follows:

(2) The commissioner of taxation and finance, upon agreement with the state comptroller and acting as an agent for the state comptroller, shall set forth the procedures for crediting any overpayment by a taxpayer of any tax or other imposition imposed by or authorized to be imposed pursuant to article nine, nine-A, twenty-two, thirty, thirty-A, thirty-B, thirty-two, or thirty-three of this chapter or article two-E of the general city law, which is administered by the commissioner of taxation and finance, and the interest on any such overpayments, against the amount of a past-due legally enforceable debt owed by such taxpayer to a state agency. An implementation plan shall be developed by the division of the budget and the department of taxation and finance which shall provide, but not be limited to, guidance with respect to coordination of debt collection pursuant to this section and subdivision twenty-seventh of section one hundred seventy-one of this article. This section shall not be deemed to abrogate or limit in any way the powers and authority of the state comptroller to set off debts owed the state against payments from the state, under the constitution of the state or any other law.

§ 58. Paragraphs (a) and (b) of subdivision 1 of section 171-l of the tax law, as added by section 6 of part R of chapter 60 of the laws of 2004, are amended to read as follows:

(a) "taxpayer" shall mean a corporation, association, company, partnership, estate, trust, liquidator, fiduciary or other entity or individual who or which is liable for any tax or other imposition imposed by or pursuant to article nine, nine-A, twenty-two, thirty, thirty-A, thirty-B, thirty-two, or thirty-three of this chapter, which tax or other imposition is administered by the commissioner of taxation and finance, or who or which is under a duty to perform an act under or pursuant to such tax or imposition, excluding a state agency, a municipal corporation or a district corporation;

(b) "overpayment" shall mean an overpayment which has been requested or determined to be refunded, a refund or a reimbursement, of a tax or other imposition imposed by or pursuant to article nine, nine-A, twenty-two, thirty, thirty-A, thirty-B, thirty-two, or thirty-three of this chapter, which is administered by the commissioner of taxation and finance; and

§ 59. Paragraph (b) of subdivision 1 of section 183 of the tax law, as amended by section 1 of part Y of chapter 63 of the laws of 2000, is amended to read as follows:

(b) For the privilege of exercising its corporate franchise, or of doing business, or of employing capital, or of owning or leasing property in this state, or of maintaining an office in this state, every domestic corporation, joint-stock company or association formed for or principally engaged in the conduct of canal, steamboat, ferry (except a ferry company operating between any of the boroughs of the city of New York under a lease granted by the city), express, navigation, pipe line, transfer, baggage express, omnibus, taxicab, telegraph, or telephone business, or formed for or principally engaged in the conduct of two or more of such businesses, and every domestic corporation, joint-stock company or association formed for or principally engaged in the conduct of a railroad, palace car, sleeping car or trucking business or formed for or principally engaged in the conduct of two or more of such businesses and which has made an election pursuant to subdivision ten of this section, and every other domestic corporation, joint-stock company or association principally engaged in the conduct of a transportation or transmission business, except a corporation, joint-stock company or association formed for or principally engaged in the conduct of a railroad, palace car, sleeping car or
trucking business or formed for or principally engaged in the conduct of
two or more of such businesses and which has not made the election
provided for in subdivision ten of this section, and except a corpo-
ration, joint-stock company or association principally engaged in the
conduct of aviation (including air freight forwarders acting as princi-
pal and like indirect air carriers) and except a corporation principally
engaged in providing telecommunication services between aircraft and
dispatcher, aircraft and air traffic control or ground station and
ground station (or any combination of the foregoing), at least ninety
percent of the voting stock of which corporation is owned, directly or
indirectly, by air carriers and which corporation's principal function
is to fulfill the requirements of (i) the federal aviation adminis-
tration (or the successor thereto) or (ii) the international civil
aviation organization (or the successor thereto), relating to the exist-
ence of a communication system between aircraft and dispatcher, aircraft
and air traffic control or ground station and ground station (or any
combination of the foregoing) for the purposes of air safety and naviga-
tion [and except a corporation, joint-stock company or association
subject to taxation under article thirty-two of this chapter] shall
pay, in advance, an annual tax to be computed upon the basis of the
amount of its capital stock within this state during the preceding year,
and upon each dollar of such amount. Provided, however, a corporation,
joint-stock company or association formed for or principally engaged in
the transportation, transmission or distribution of gas, electricity or
steam shall not be subject to tax under this section or section one
hundred eighty-four of this article.
§ 60. Subdivision 10 of section 183 of the tax law, as added by chap-
ter 309 of the laws of 1996, is amended to read as follows:
10. Election. Every corporation, joint-stock company or
association formed for or principally engaged in the conduct of a rail-
road (including surface railroad, whether or not operated by steam,
subway railroad or elevated railroad), palace car, sleeping car or
trucking business or formed for or principally engaged in the conduct of
two or more of such businesses, which would be subject to article nine-A
or thirty-two] of this chapter if the election provided for under this
subdivision were not made, may elect to be subject to the provisions of
this section and, as applicable, section one hundred eighty-four of this
article, rather than the provisions of such article nine-A or thirty-
two]. [In the case of such a corporation, joint-stock company or associ-
ation subject to the tax imposed under this section and, as applicable,
section one hundred eighty-four of this article, for the taxable year
ending December thirty-first, nineteen hundred ninety-seven, such corpo-
ation, joint-stock company or association must make such election on or
before March fifteenth, nineteen hundred ninety-eight, and such election
shall apply to the taxable year ending on December thirty-first, nine-
teen hundred ninety-eight and to succeeding taxable years, until
revoked. In the case of such a corporation, joint-stock company or asso-
ciation which is not subject to the tax imposed under this section and,
as applicable, section one hundred eighty-four of this article for the
taxable year ending December thirty-first, nineteen hundred ninety-seven,
but thereafter would be subject to article nine-A or thirty-two of
this chapter if the election provided for under this subdivision were
not made, such] Such corporation, joint-stock company or association
must make such election by the first day on which such corporation,
joint-stock company or association would be required to file a return or
report (without regard to extensions) under this section or section one
hundred eighty-four of this article, or section one hundred eighty-
three-a or one hundred[...]eighty-four-a of this article, or article
nine-A or thirty-two] of this chapter. An election made pursuant to
this subdivision shall continue to be in effect until revoked by the
taxpayer. A revocation of the election to be subject to this section and, as applicable, section one hundred eighty-four of this article, shall be irrevocable. Such election, and a revocation thereof, shall be made in the manner prescribed by the commissioner, whether by regulation or otherwise. Such revocation shall apply as of the first day of January next following the end of a taxable year with respect to which the taxpayer had been subject to this section and, as applicable, section one hundred eighty-four of this article, by reason of an election made pursuant to this subdivision.

§ 61. The section heading and subdivisions 1 and 5 of section 183-a of the tax law, the section heading as added by chapter 931 of the laws of 1982, subdivision 1 as amended by section 1 of part A of chapter 59 of the laws of 2013 and subdivision 5 as amended by chapter 945 of the laws of 1990, are amended to read as follows:

[Temporary metropolitan] Metropolitan transportation business tax surcharge on transportation and transmission corporations and associations. 1. The term "corporation" as used in this section shall include an association, within the meaning of paragraph three of subsection (a) of section seventy-seven hundred one of the internal revenue code (including a limited liability company), a publicly traded partnership treated as a corporation for purposes of the internal revenue code pursuant to section seventy-seven hundred four thereof and any business conducted by a trustee or trustees wherein interest or ownership is evidenced by certificates or other written instruments. Every corporation, joint-stock company or association formed for or principally engaged in the conduct of canal, steamboat, ferry (except a ferry company operating between any of the boroughs of the city of New York under a lease granted by the city), express, navigation, pipe line, transfer, baggage express, omnibus, taxicab, telegraph, or telephone business, or formed for or principally engaged in the conduct of two or more such businesses, and every corporation, joint-stock company or association formed for or principally engaged in the conduct of a railroad, palace car, sleeping car or trucking business or formed for or principally engaged in the conduct of two or more of such businesses and which has made an election pursuant to subdivision ten of section one hundred eighty-three of this article, and every other corporation, joint-stock company or association principally engaged in the conduct of a transportation or transmission business, except a corporation, joint-stock company or association formed for or principally engaged in the conduct of a railroad, palace car, sleeping car or trucking business or formed for or principally engaged in the conduct of two or more of such businesses and which has not made the election provided for in subdivision ten of section one hundred eighty-three of this article, and except a corporation, joint-stock company or association principally engaged in the conduct of aviation (including air freight forwarders acting as principal and like indirect air carriers) and except a corporation principally engaged in providing telecommunication services between aircraft and dispatcher, aircraft and air traffic control or ground station and ground station (or any combination of the foregoing), at least ninety percent of the voting stock of which corporation is owned, directly or indirectly, by air carriers and which corporation's principal function is to fulfill the requirements of (i) the federal aviation administration (or the successor thereto) or (ii) the international civil aviation organization (or the successor thereto), relating to the existence of a communication system between aircraft and dispatcher, aircraft and air traffic control or ground station and ground station (or any combination of the foregoing) for the purposes of air safety and navigation [and except a corporation, joint-stock company or association which is liable to taxation under article thirty-two of this chapter], shall pay for the privilege of exercising its corporate franchise, or of doing business, or of employing capital, or of owning or leasing property in
the metropolitan commuter transportation district in such corporate or
ing organized capacity, or of maintaining an office in such district, a tax
surcharge [for all or any part of its years commencing on or after Janu-
ary first, nineteen hundred eighty-two but ending before December thir-
ty-first, two thousand eighteen], which tax surcharge, in addition to
the tax imposed by section one hundred eighty-three of this article,
shall be computed at the rate of [eighteen percent of the tax imposed
under such section one hundred eighty-three for such years or any part
of such years ending before December thirty-first, nineteen hundred
eighty-three after the deduction of any credits otherwise allowable
under this article, and at the rate of] seventeen percent of the tax
imposed under such section for such years or any part of such years
[ending on or after December thirty-first, nineteen hundred eighty-
three] after the deduction of any credits otherwise allowable under this
article; provided, however, that such rates of tax surcharge shall be
applied only to that portion of the tax imposed under section one
hundred eighty-three of this article after the deduction of any credits
otherwise allowable under this article which is attributable to the
taxpayer's business activity carried on within the metropolitan commuter
transportation district as so determined in the manner prescribed by the
S. 6359--D  142  A. 8559--D

rules and regulations promulgated by the commissioner[; and provided,

further, that the tax surcharge imposed by this section shall not be
imposed upon any taxpayer for more than four hundred thirty-two months].

5. [The report covering the tax surcharge which must be calculated
pursuant to this section based upon the tax reportable on the report due
by March fifteenth, nineteen hundred eighty-two under section one
hundred eighty-three of this article shall be filed on or before March
fifteenth, nineteen hundred eighty-three. The report covering the tax
surcharge which must be calculated pursuant to this section based upon
the tax reportable on the report due by March fifteenth, nineteen
hundred eighty-three under section one hundred eighty-three of this
article shall be filed on or before March fifteenth, nineteen hundred
eighty-four. The report covering the tax surcharge which must be cal-
culated pursuant to this section based upon the tax reportable on the
report due by March fifteenth, nineteen hundred eighty-four under
section one hundred eighty-three of this article shall be filed on or before
March fifteenth, nineteen hundred eighty-five. The report covering the
tax surcharge which must be calculated pursuant to this section based
upon the tax reportable on the report due by March fifteenth, nineteen
hundred eighty-five under section one hundred eighty-three of this
article shall be filed on or before March fifteenth, nineteen hundred
eighty-six. The report covering the tax surcharge which must be cal-
culated pursuant to this section based upon the tax reportable on the
report due by March fifteenth, nineteen hundred eighty-six under section
one hundred eighty-three of this article shall be filed on or before March
fifteenth, nineteen hundred eighty-seven. The report covering the
tax surcharge which must be calculated pursuant to this section based
upon the tax reportable on the report due by March fifteenth, nineteen
hundred eighty-seven under section one hundred eighty-three of this
article shall be filed on or before March fifteenth, nineteen hundred
eighty-eight. The report covering the tax surcharge which must be cal-
culated pursuant to this section based upon the tax reportable on the
report due by March fifteenth, nineteen hundred eighty-eight under
section one hundred eighty-three of this article shall be filed on or before
March fifteenth, nineteen hundred eighty-nine. The report covering the
tax surcharge which must be calculated pursuant to this section based
upon the tax reportable on the report due by March fifteenth, nineteen
hundred eighty-nine under section one hundred eighty-three of this
article shall be filed on or before March fifteenth, nineteen
hundred ninety.] The report covering the tax surcharge which must be
calculated pursuant to this section based upon the tax reportable on the
report due by March fifteenth of any year [subsequent to nineteen hundred eighty-nine] under section one hundred eighty-three of this article shall be filed on or before March fifteenth of the year next succeeding such year. An extension pursuant to section one hundred ninety-three of this article shall be allowed only if a taxpayer files with the commissioner an application for extension in such form as said commissioner may prescribe by regulation and pays on or before the date of such filing in addition to any other amounts required under this article, either ninety percent of the entire tax surcharge required to be paid under this section for the applicable period, or not less than the tax surcharge shown on the taxpayer's report for the preceding year, if such preceding year consisted of twelve months. The tax surcharge imposed by this section shall be payable to the commissioner in full at the time the report is required to be filed, and such tax surcharge or the balance thereof, imposed on any taxpayer which ceases to exercise its franchise or be subject to the tax surcharge imposed by this section shall be payable to the commissioner at the time the report is required to be filed, provided such tax surcharge of a domestic corporation which continues to possess its franchise shall be subject to adjustment as the circumstances may require; all other tax surcharges of any such taxpayer, which pursuant to the foregoing provisions of this section would otherwise be payable subsequent to the time such report is required to be filed, shall nevertheless be payable at such time. All of the provisions of this article presently applicable to section one hundred eighty-three of this article are applicable to the tax surcharge imposed by this section except for section one hundred ninety-two of this article.

§ 62. Subdivision 1 of section 184 of the tax law, as amended by section 2 of part Y of chapter 63 of the laws of 2000, is amended to read as follows:
1. The term "corporation" as used in this section shall include an association, within the meaning of paragraph three of subsection (a) of section seventy-seven hundred one of the internal revenue code (including a limited liability company), a publicly traded partnership treated as a corporation for purposes of the internal revenue code pursuant to section seventy-seven hundred four thereof.

Every corporation, joint-stock company or association formed for or principally engaged in the conduct of canal, steamboat, ferry (except a ferry company operating between any of the boroughs of the city of New York under a lease granted by the city), express, navigation, pipe line, transfer, baggage express, omnibus, taxicab, telegraph or local telephone business, or formed for or principally engaged in the conduct of two or more of such businesses, and every corporation, joint-stock company or association formed for or principally engaged in the conduct of surface railroad, whether or not operated by steam, subway railroad, elevated railroad, palace car, sleeping car or trucking business or formed for or principally engaged in the conduct of two or more such businesses and which has made an election pursuant to subdivision ten of section one hundred eighty-three of this article, and every other corporation, joint-stock company or association formed for or principally engaged in the conduct of a transportation or transmission business (other than a telephone business), except a corporation, joint-stock company or association formed for or principally engaged in the conduct of a surface railroad, whether or not operated by steam, subway railroad, elevated railroad, palace car, sleeping car or trucking business or formed for or principally engaged in the conduct of two or more of such businesses and which has not made the election provided for in subdivision ten of section one hundred eighty-three of this article, and, except a corporation, joint-stock company or association principally engaged in the conduct of aviation (including air freight forwarders acting as principal and like indirect air carriers) and except a corpo-
ration principally engaged in providing telecommunication services between aircraft and dispatcher, aircraft and air traffic control or ground station and ground station (or any combination of the foregoing), at least ninety percent of the voting stock of which corporation is owned, directly or indirectly, by air carriers and which corporation's principal function is to fulfill the requirements of (i) the federal aviation administration (or the successor thereto) or (ii) the international civil aviation organization (or the successor thereto), relating to the existence of a communication system between aircraft and dispatcher, aircraft and air traffic control or ground station and

S. 6359--D

144

A. 8559--D

ground station (or any combination of the foregoing) for the purposes of air safety and navigation and [except a corporation, joint-stock company or association which is liable to taxation under article thirty-two of this chapter] for the privilege of exercising its corporate franchise, or of doing business, or of employing capital, or of owning or leasing property in this state in a corporate or organized capacity, or maintaining an office in this state, shall pay a franchise tax which shall be equal to [(i) three-quarters of one percent for taxable years ending before two thousand one, provided that for a taxable year ending in two thousand the rate shall be reduced to three-eighths of one percent effective July first, two thousand with the result that for purposes of implementation of such change in rate the applicable rate for such a year shall be nine-sixteenths of one percent, and (ii) three-eighths of one percent for taxable years commencing after two thousand, upon its gross earnings from all sources within this state; except that, for taxable years commencing on or after January first, nineteen hundred eighty-five and ending on or before December thirty-first, nineteen hundred eighty-nine, every corporation, joint-stock company or association formed for or principally engaged in the conduct of telephone or telegraph business shall pay a franchise tax which shall be equal to three-tenths of one per centum upon its gross earnings from all sources within this state and,] for taxable years commencing on or after January first, nineteen hundred ninety, every corporation, joint-stock company or association formed for or principally engaged in the conduct of local telephone business, or telegraph business shall pay a franchise tax which shall be equal to [(i) three-quarters of one percent for taxable years ending before two thousand one, provided that for a taxable year ending in two thousand the rate shall be reduced to three-eighths of one percent effective July first, two thousand with the result that for purposes of implementation of such change in rate the applicable rate for such a year shall be nine-sixteenths of one percent, and (ii)] three-eighths of one percent for taxable years commencing after two thousand, upon its gross earnings from all sources within this state, except that, a corporation, joint-stock company or association formed for or principally engaged in the conduct of a railroad business, or any other corporation formed for or principally engaged in the conduct of a railroad business, for taxable years prior to nineteen hundred ninety-seven, and corporations, joint-stock companies or associations formed for or principally engaged in the conduct of canal, steamboat, ferry (except a ferry company operating between any of the boroughs of the city of New York under a
for taxable years beginning in nineteen hundred ninety-seven or there-
after, in the case of a corporation, joint-stock company or association
which, with respect to taxable years beginning after nineteen hundred
ninety-seven, has made an election pursuant to subdivision ten of
section one hundred eighty-three of this article and which is formed for
or principally engaged in the conduct of surface railroad, whether or
not operated by steam, subway railroad, elevated railroad, palace car,
sleeping car or trucking business or formed for or principally engaged
in the conduct of two or more of such businesses, such corporation,
joint-stock company or association shall pay a franchise tax which shall
be equal to [(i) six-tenths of one percent for taxable years ending
before two thousand one, provided that for a taxable year ending in two
thousand the rate shall be reduced to three-eighths of one percent
effective July first, two thousand with the result that for purposes of
implementation of such change in rate for such a
year shall be thirty-nine eightieths of one percent, and (ii)] three-
eighths of one percent for taxable years commencing after two thousand,
upon its gross earnings from all sources within this state, provided
that in the case of a corporation, joint-stock company or association
formed for or principally engaged in the conduct of surface railroad,
whether or not operated by steam, subway railroad, elevated railroad,
palace car or sleeping car business, or formed for or principally
engaged in the conduct of two or more of such businesses, such gross
earnings shall not include earnings derived from business of an inter-
state or foreign character.
Provided, however, with respect to railroad, elevated railroad, palace
car or sleeping car business or any other corporation formed for or
principally engaged in the conduct of a railroad business and canal,
steamboat, ferry (except a ferry company operating between any of the
boroughs of the city of New York under a lease granted by the city),
navigation or any corporation formed for or principally engaged in the
operation of vessels where the gross earnings from such transportation
business both originating and terminating within this state and travers-
ing both this state and another state or states or country shall be
subject to the franchise tax imposed by this section (except where such
corporation, joint-stock company or association is formed for or princi-
pally engaged in the conduct of a railroad (including surface railroad,
whether or not operated by steam, subway railroad or elevated railroad),
palace car or sleeping car business or formed for or principally engaged
in the conduct of two or more of such businesses, and has not made the
election provided for under subdivision ten of section one hundred
eighty-three of this article) and such earnings shall be allocated to
this state in the same ratio that the mileage within the state bears to
the total mileage of such business. Provided, further, a corporation,
joint-stock company or association formed for or principally engaged in
the transportation, transmission or distribution of gas, electricity or
steam shall not be subject to tax under this section or section one
hundred eighty-three of this article.

The term "local telephone business" means the provision or furnishing
of telecommunication services for hire wherein the service furnished by
the provider thereof consists of carrier access service or the service
originates and terminates within the same local access and transport
area ("LATA"), a local access and transport area being that geographic
area as established and approved, and as so set and in existence on July
first, nineteen hundred ninety-four, pursuant to the modification of
final judgment in United States v. Western Electric Company (civil
action no. 82-0192) in the United States district court for the District of Columbia or within the LATA-like Rochester non-associated independent area.

The term "telecommunication services" shall have the meaning ascribed to such term in section one hundred eighty-six-e of this article.

§ 63. The section heading and the opening paragraph of subdivision 1 of section 184-a of the tax law, the section heading as added by chapter 931 of the laws of 1982 and the opening paragraph of subdivision 1 as amended by section 2 of part A of chapter 59 of the laws of 2013, are amended to read as follows:

Additional temporary metropolitan transportation business tax surcharge on transportation and transmission corporations and associations services.

The term "corporation" as used in this section shall include an association, within the meaning of paragraph three of subsection (a) of section seventy-seven hundred one of the internal revenue code (including a limited liability company), and a publicly traded partnership treated as a corporation for purposes of the internal revenue code pursuant to section seventy-seven hundred four thereof. Every corporation, joint-stock company or association formed for or principally engaged in the conduct of canal, steamboat, ferry (except a ferry company operating between any of the boroughs of the city of New York under a lease granted by the city), express, navigation, pipeline, transfer, baggage express, omnibus, taxicab, telegraph or local telephone business, or formed for or principally engaged in the conduct of two or more such businesses, and every corporation, joint-stock company or association formed for or principally engaged in the conduct of a surface railroad, whether or not operated by steam, subway railroad, elevated railroad, palace car, sleeping car or trucking business or principally engaged in the conduct of two or more such businesses and which has made an election pursuant to subdivision ten of section one hundred eighty-three of this article, and every other corporation, joint-stock company or association formed for or principally engaged in the conduct of a transportation or transmission business (other than a telephone business) except a corporation, joint-stock company or association formed for or principally engaged in the conduct of a surface railroad, whether or not operated by steam, subway railroad, elevated railroad, palace car, sleeping car or trucking business or principally engaged in the conduct of two or more such businesses and which has not made the election provided for in subdivision ten of section one hundred eighty-three of this article, and except a corporation, joint-stock company or association principally engaged in the conduct of aviation (including air freight forwarders acting as principal and like indirect air carriers) and except a corporation principally engaged in providing telecommunication services between aircraft and dispatcher, aircraft and air traffic control or ground station and ground station (or any combination of the foregoing), at least ninety percent of the voting stock of which corporation is owned, directly or indirectly, by air carriers and which corporation's principal function is to fulfill the requirements of (i) the federal aviation administration (or the successor thereto) or (ii) the international civil aviation organization (or the successor thereto), relating to the existence of a communication system between aircraft and dispatcher, aircraft and air traffic control or ground station and ground station (or any combination of the foregoing) for the purposes of air safety and navigation, and except a corporation, joint-stock company or association which is liable to taxation under article thirty-two of this chapter, shall pay for the privilege of exercising its corporate franchise, of doing business, or of employing capital, or of owning or leasing property in the metropolitan commuter transpor-
tion district in such corporate or organized capacity, or of maintain-
ing an office in such district, a tax surcharge [for all or any part of
its taxable years commencing on or after January first, nineteen hundred
eighty-two, but ending before December thirty-first, two thousand eigh-
teen], which tax surcharge, in addition to the tax imposed by section
one hundred eighty-four of this article, shall be computed at the rate
of [eighteen percent of the tax imposed under such section one hundred
eighty-four for such taxable years or any part of such taxable years
ending before December thirty-first, nineteen hundred eighty-three after
the deduction of any credits otherwise allowable under this article, and
at the rate of] seventeen percent of the tax imposed under such section
for such taxable years or any part of such taxable years [ending on or
after December thirty-first, nineteen hundred eighty-three] after the
deduction of any credits otherwise allowable under this article;
provided, however, that such rates of tax surcharge shall be applied
only to that portion of the tax imposed under section one hundred eight-
y-four of this article after the deduction of any credits otherwise
allowable under this article which is attributable to the taxpayer's
business activity carried on within the metropolitan commuter transpor-
tation district[, and provided, further, that the tax surcharge imposed
by this section on corporations, joint stock companies and associations
formed for or principally engaged in the conduct of telephone or tele-
graph business shall be computed in accordance with this subdivision and
paragraph (c) of subdivision two of this section as if the three-quar-
ters of one percent rate of tax provided for in subdivision one of
section one hundred eighty-four of this article were applicable to such
telephone and telegraph businesses for taxable years commencing on or
after January first, nineteen hundred eighty-five and ending on or
before December thirty-first, nineteen hundred eighty-nine; and
provided, further, that the tax surcharge imposed by this section shall
not be imposed upon any taxpayer for more than four hundred thirty-two
months]. Provided, however, that for taxable years beginning in two
thousand and thereafter, for purposes of this subdivision the tax
imposed under section one hundred eighty-four of this article shall be
deemed to have been imposed at the rate of three-quarters of one
percent, except that in the case of a corporation, joint stock company
or association which has made an election pursuant to subdivision ten of
section one hundred eighty-three of this article, for purposes of this
subdivision the tax imposed under section one hundred eighty-four of
this article shall be deemed to have been imposed at the rate of six-
tenths of one percent.
§ 64. Subdivision 8 of section 186-a of the tax law is REPEALED.
§ 65. The section heading and subdivision 1 of section 186-c of the
tax law, the section heading as amended by chapter 2 of the laws of
1995, subdivision 1 as amended by section 3 of part II-1 of chapter 57
of the laws of 2008, subparagraph 1 of paragraph (a) of subdivision 1 as
amended by section 3 of part A of chapter 59 of the laws of 2013, are
amended to read as follows:

[Temporary metropolitan] Metropolitan transportation business tax
surcharge on utility services and excise tax on sale of telecommuni-
cation services. 1. (a) (1) Every utility doing business in the metro-
politan commuter transportation district shall pay a tax surcharge, in
addition to the tax imposed by section one hundred eighty-six-a of this
S. 6359-D 148 A. 8559-D
imposed under such section [for such taxable years or any part of such taxable years ending on or after December thirty-first, nineteen hundred eighty-three] after the deduction of credits otherwise allowable under this article except any utility credit provided for by article thirteen-A of this chapter; provided, however, that such rates of tax surcharge shall be applied only to that portion of the tax imposed under section one hundred eighty-six-a of this article after the deduction of credits otherwise allowable under this article, except any utility credit provided for by article thirteen-A of this chapter, which is attributable to the taxpayer’s gross income or gross operating income from business activity carried on within the metropolitan commuter transportation district [and provided, further, that the tax surcharge imposed by this section shall not be imposed upon any taxpayer for more than four hundred thirty-two months].

(2) Provided however, that [commencing January first, two thousand,] in the case of the tax imposed under paragraph (a) of subdivision one of section one hundred eighty-six-a of this article (relating to providers of telecommunications services) such tax surcharge shall be calculated as if the tax imposed under section one hundred eighty-six-a of this article were imposed at a rate of three and one-half percent.

(b) In addition to the surcharge imposed by paragraph (a) of this subdivision, there is hereby imposed a surcharge on the gross receipts from telecommunications services relating to the metropolitan commuter transportation district at the rate of seventeen percent of the state tax rate under section one hundred eighty-six of this article [for all or part of taxable years commencing on and after January first, nineteen hundred ninety-five but ending before December thirty-first, two thousand thirteen]. All the definitions and other provisions of section one hundred eighty-six of this article shall apply to the tax imposed by this paragraph with such modification and limitation as may be necessary (including substituting the words "metropolitan commuter transportation district" for "state" where appropriate) in order to adapt the language of such section one hundred eighty-six-e of this article to the surcharge imposed by this paragraph within such metropolitan commuter transportation district so as to include (1) any intra-district telecommunication services, except any telecommunication services the gross receipts from which are subject to tax under subparagraph four of this paragraph, (2) any inter-district telecommunication services which originate or terminate in such district and are charged to a service address therein regardless of where the amounts charged for such services are billed or ultimately paid, except any telecommunications services the gross receipts from which are subject to tax under subparagraph four of this paragraph, (3) as apportioned to such district, private telecommunication services, except any telecommunication services the gross receipts from which are subject to tax under subparagraph four of this paragraph, and (4) mobile telecommunications service provided by a home service provider where the place of primary use is within such metropolitan commuter transportation district. Provided however, [commencing October first, nineteen hundred ninety-eight] such tax surcharge shall be calculated as if the tax imposed under section one hundred eighty-six-e of this article were imposed at a rate of three and one-half percent.

§ 66. Clause (iii) of subparagraph (D) of paragraph 3 of subsection (b) of section 605 of the tax law, as added by chapter 658 of the laws of 2003, is amended to read as follows:

(iii) Provided further, that for the purposes of item (i) of clause (i) of this subparagraph, a trustee which is a banking corporation as defined in subsection (a) of section fourteen hundred fifty-two of this chapter, as such section was in effect on December thirty-first, two thousand fourteen, and which is domiciled outside the state of New York at the time it becomes a trustee of the trust shall be deemed to contin-
ue to be a trustee domiciled outside the state of New York notwithstanding it thereafter otherwise becomes a trustee domiciled in the state of New York by virtue of being acquired by, or becoming an office or branch of, a corporate trustee domiciled within the state of New York.

§ 67. Subparagraph (A) of paragraph 10 of subsection (a) of section 606 of the tax law, as amended by section 3 of part CC of chapter 85 of the laws of 2002, is amended to read as follows:

(A) the business of which the individual is an owner is substantially similar in operation and in ownership to a business entity taxable, or previously taxable, under section one hundred eighty-three, one hundred eighty-four, or one hundred eighty-five of article nine; article nine-A, thirty-two or thirty-three of this chapter; article twenty-three of this chapter or which would have been subject to tax under such article twenty-three (as such article was in effect on January first, nineteen hundred eighty), article thirty-two of this chapter or which would have been subject to tax under such article thirty-two (as such article was in effect on December thirty-first, two thousand fourteen) or the income (or losses) of which is (or was) includable under article twenty-two of this chapter whereby the intent and purpose of this paragraph and paragraph five of this subsection with respect to refunding of credit to new business would be evaded; or

§ 68. Subparagraph (B) of paragraph 1 of subsection (i) of section 606 of the tax law, as amended by section 7 of part C-1 of chapter 57 of the laws of 2009, clause (ix) as amended by section 4 of part G of chapter 59 of the laws of 2013, clause (xxxii) as added by section 5 of part MM of chapter 59 of the laws of 2011, clause (xxxiv) as added by clause (xxxv) as added by section 2 of part AA of chapter 59 of the laws of 2013, clause (xxxv) as added by section 4 of part EE of chapter 59 of the laws of 2013, clause (xxxvi) as added by section 8 of part A of chapter 68 of the laws of 2013, and clause (xxxvii) as added by section 8 of part A of chapter 68 of the laws of 2013, is amended to read as follows:

(B) shall be treated as the owner of a new business with respect to such share if the corporation qualifies as a new business pursuant to paragraph [(f)] [(j)] (f) of subdivision [twelve] one of section two hundred ten-B of this chapter.

With respect to the following credit under this section: section two hundred ten-B

(i) Investment tax credit under

(ii) Empire zone investment tax credit under subsection (j)

[(iii) Empire zone wage tax credit under subsection (k)]]

Cost or other basis under subdivision [twelve-B] three of section two hundred ten-B

The corporation's credit base under S. 6359--D 150 A. 8559--D
(iv) Empire zone capital taxQualified investments and contributions under subdivision twenty of section two hundred ten or subsection (d) of section fourteen hundred fifty-six.

(v) Agricultural property tax Allowable school district property taxes under subdivision [twenty-two] eleven of section two hundred [ten] ten-B.

(vi) Credit for employment of persons with disabilities Qualified first-year wages or qualified second-year wages under subdivision [twenty-three] twelve of section two hundred ten or subsection (f) of section fourteen hundred fifty-six] ten-B.

(vii) Employment incentive credit under subsection (a-1) Applicable investment credit base under subdivision [twelve-B] two of section two hundred ten-B.

(viii) Empire zone employment incentive credit under subsection (j-1) Applicable investment credit base under subdivision [twelve-C] four of section two hundred [ten] ten-B.

(ix) Alternative fuels and electric vehicle recharging property Amount of credit under subdivision [twenty-four] thirty of section two hundred [ten] ten-B.

(x) Qualified emerging technology company employment credit under subdivision [twelve-E] seven of section two hundred [ten] ten-B.

(xi) Qualified emerging technology company capital tax credit under subdivision [twelve-F] eight of section two hundred ten-B.

(xii) Credit for purchase of an automated external defibrillator Cost of an automated external defibrillator under subdivision [twenty-five] thirteen of section two hundred ten or subsection (j) of section fourteen hundred fifty-six] ten-B.

(xiii) Low-income housing credit Credit amount under subdivision [thirty] fifteen of section two hundred ten-B.

(xiv) Credit for transportation improvement contributions under For taxable years beginning before January first, two thousand nine, amount of credit under subdivision thirty-two of section two hundred ten or subsection (n) of section fourteen hundred fifty-six] ten-B.
(xv) QEZE credit for real property taxes under subsection (bb)  
Amount of credit under subdivision [twenty-seven] five of section two hundred [ten or subsection (a) of section fourteen hundred fifty-six] ten-B

(xvi) QEZE tax reduction credit under subsection (cc)  
Amount of benefit period factor, employment increase factor and zone allocation factor (without regard to pro ration) under subdivision [twenty-eight] six of section two hundred [ten or subsection (p) of section fourteen hundred fifty-six] ten-B and amount of tax factor as determined under subdivision (f) of section sixteen

(xvii) Green building credit under subsection (y)  
Amount of green building credit under subdivision [thirty-one] sixteen of section two hundred [ten or subsection (m) of section fourteen hundred fifty-six] ten-B

(xviii) Credit for long-term care insurance premiums under subsection (aa)  
Qualified costs under subdivision [twenty-five-a] fourteen of section two hundred [ten or subsection (q) of section fourteen hundred fifty-six] ten-B

(xx) Remediated brownfield credit for real property taxes for qualified sites under subsection (ee)  
Amount of credit under subdivision [thirty-four] eighteen of section two hundred [ten or subsection (r) of section fourteen hundred fifty-six] ten-B

(xxii) Empire state film production credit under subsection (gg)  
Amount of credit for qualified production costs in production of a qualified film under subdivision [thirty-six] twenty of section two hundred [ten] ten-B
[(xxiii) Qualified emerging technology company facilities, operations and training credit under subsection (nn) subdivision twelve-G of section two hundred ten]

[(xxiv) Security training tax credit Amount of credit under subdivision under subsection (ii) thirty-seven twenty-one of section two hundred ten or under subsection (t) of section four hundred fifty-six]

[(xxv) Credit for qualified fuel cell electric generating equipment expenditures for taxable years beginning before January first, two thousand nine, amount of credit under subdivision ten or subsection (t) of section four hundred fifty-six]

[(xxvi) Empire state commercial production credit under subsection (jj) Amount of credit for qualified production costs in production of a qualified commercial under subdivision thirty-eight twenty-three of section two hundred ten]

[(xxvii) Biofuel production tax credit under subsection (jj) Amount of credit under subdivision thirty-eight twenty-four of section two hundred ten]

[(xxviii) Clean heating fuel credit under subsection (mm) Amount of credit under subdivision thirty-nine twenty-five of section two hundred ten]

[(xxix) Credit for rehabilitation of historic properties under subsection (oo) Amount of credit under subdivision forty twenty-six of section two hundred ten]

[(xxx) Excelsior jobs program tax credit under subsection (qq) Amount of credit under subdivision forty-one thirty-one of section two hundred ten or under subdivision (u) of section four hundred fifty-six ten]

[(xxxi) Empire state film post production credit under subsection (qq) Amount of credit for qualified post production costs of a qualified film under subdivision forty-one thirty-two of section two hundred ten]

[(xxxii) Economic transformation and facility redevelopment credit Amount of credit under subdivision forty-three thirty-five of section two hundred or under subsection (x) of section four hundred fifty-six two hundred ten]
(xxxiii) New York youth works  
Amount of credit under subdivision [forty-four] thirty-six of section two hundred ten-B

(ddd) Empire state jobs  
retention program credit  
Amount of credit under subdivision [forty-four] thirty-seven of section two hundred ten-C.

(subscription) Credit for companies who provide transportation to individuals with disabilities  
Amount of credit under subdivision thirty-eight of section two hundred ten-B

(xxxiv) Beer production credit  
Amount of credit under subdivision [forty-five] thirty-nine of section two hundred ten-B

(xxxv) Hire a vet credit  
Amount of credit under subdivision [twenty-three-a] twenty-nine of section two hundred ten-B

(xxxv) Minimum wage reimbursement credit under subsection (aaa)  
Amount of credit under subdivision [forty-six] forty of section two hundred ten-B

(xxxvi) Tax-free NY area tax elimination credit  
Amount of credit under subdivision [forty-seven] forty-one of section two hundred ten-B

(xxxvii) Real property tax credit for manufacturers under subsection (xx)  
Amount of credit under subdivision forty-three of section two hundred ten-B

(xxxviii) Tax-free NY area excise tax on telecommunications services credit under subsection (yy)  
Amount of credit under subdivision forty-four of section two hundred ten-B

§ 69. Subparagraphs (A) and (B) of paragraph 3 of subsection (i) of section 606 of the tax law, as added by chapter 170 of the laws of 1994, are amended to read as follows:  
(A) Credit carryover. Any excess credit under subparagraph (A) of paragraph one of this subsection, as it was in effect for taxable years beginning before nineteen hundred ninety-four, may be carried over to the shareholder's following year or years and may be deducted from such
translations of the commissioner consist of the internal revenue code, as such portion shall be determined under regulations of subsection (f) of section thirteen hundred sixty of this article is in effect, there shall be an S corporation where the election provided for in subsection (a) of section six hundred sixty of this chapter is in effect, there shall be three of such shareholder's prorata share of items of S corporation included on section two hundred [ten].

(21) In relation to the disposition of stock or indebtedness of a corporation which elected under subchapter S of chapter one of the internal revenue code for any taxable year of such corporation beginning in the case of a corporation taxable under article nine-A of this chapter, after December thirty-first, nineteen hundred eighty, the amount required to be added to federal adjusted gross income pursuant to subsection (n) of this section.

§ 71. Paragraph 2 of subsection (a) of section sixty-three of the tax law, as amended by section 2 of part C of chapter 57 of the laws of 2010, is amended to read as follows:

(2) In determining New York source income of a nonresident shareholder of an S corporation where the election provided for in subsection (a) of section six hundred sixty of this article is in effect, there shall be included only the portion derived from or connected with New York sources of such shareholder's prorata share of items of S corporation income, loss and deduction entering into his federal adjusted gross income, increased by reductions for taxes described in paragraphs two and three of subsection (f) of section thirteen hundred sixty-six of the internal revenue code, as such portion shall be determined under regulations of the commissioner consistent with the applicable methods and
rules for allocation under article nine-A [or thirty-two] of this chapter, regardless of whether or not such item or reduction is included in entire net income under article nine-A [or thirty-two] for the tax year. If a nonresident is a shareholder in an S corporation where the election provided for in subsection (a) of section six hundred sixty of this article is in effect, and the S corporation has distributed an installment obligation under section 453(h)(1)(A) of the Internal Revenue Code, then any gain recognized on the receipt of payments from the installment obligation for federal income tax purposes will be treated as New York source income allocated in a manner consistent with the applicable methods and rules for allocation under article nine-A [or thirty-two] of this chapter in the year that the assets were sold. In addition, if the shareholders of the S corporation have made an election under section 338(h)(10) of the Internal Revenue Code, then any gain recognized on the deemed asset sale for federal income tax purposes will be treated as New York source income allocated in a manner consistent with the applicable methods and rules for allocation under article nine-A [or thirty-two] of this chapter in the year that the shareholder made the section 338(h)(10) election. For purposes of a section 338(h)(10) election, when a nonresident shareholder exchanges his or her S corporation stock as part of the deemed liquidation, any gain or loss recognized shall be treated as the disposition of an intangible asset and will not increase or offset any gain recognized on the deemed assets sale as a result of the section 338(h)(10) election.

§ 72. Subparagraph (A) of paragraph 4 of subsection (c) of section 658 of the tax law, as amended by section 1 of part DD of chapter 686 of the laws of 2003, is amended to read as follows:

(A) General. Every entity which is a partnership, other than a publically traded partnership as defined in section 7704 of the federal Internal Revenue Code, subchapter K limited liability company or an S corporation for which the election provided for in subsection (a) of section six hundred sixty of this article is in effect, which has partners, members or shareholders who are nonresident individuals, as defined under subsection (b) of section six hundred five of this article, or C corporations, and which has any income derived from New York sources, determined in accordance with the applicable rules of section six hundred thirty-one of this article as in the case of a nonresident individual, shall pay estimated tax on such income on behalf of such partners, members or shareholders in the manner and at the times prescribed by subsection (c) of section six hundred eighty-five of this article. For purposes of this paragraph, the term "estimated tax" shall mean a partner's, member's or shareholder's distributive share or pro rata share of the entity income derived from New York sources, multiplied by the highest rate of tax prescribed by section six hundred one of this article for the taxable year of any partner, member or shareholder who is an individual taxpayer, or paragraph (a) of subdivision one of section two hundred ten of this chapter for the taxable year of any partner, member or shareholder which is a C corporation, whether or not such C corporation is subject to tax under article nine, nine-A[or thirty-two] or thirty-three of this chapter, and reduced by the distributive share or pro rata share of any credits determined under section one hundred eighty-seven, one hundred eighty-seven-a, six hundred sixty-four, or fifteen hundred eleven of this chapter, whichever is applicable, derived from the entity.

§ 73. Subsections (a) and (h) of section 660 of the tax law, subsection (a) as amended by section 50 and subsection (h) as amended by section 66 of part A of chapter 389 of the laws of 1997, are amended to read as follows:

(a) Election. If a corporation is an eligible S corporation, the shareholders of the corporation may elect in the manner set forth in subsection (b) of this section to take into account, to the extent...
provided for in this article (or in article thirteen of this chapter, in
the case of a shareholder which is a taxpayer under such article), the S
corporation items of income, loss, deduction and reductions for taxes
described in paragraphs two and three of subsection (f) of section thir-
teen hundred sixty-six of the internal revenue code which are taken into
account for federal income tax purposes for the taxable year. No S.
6359--D  157  A. 8559--D

election under this subsection shall be effective unless all sharehold-
ers of the corporation have so elected. An eligible S corporation is (i)
an S corporation which is subject to tax under article nine-A [or thrir-
ty-two] of this chapter, or (ii) an S corporation which is the parent of
a qualified subchapter S subsidiary subject to tax under article nine-A,
where the shareholders of such parent corporation are entitled to make
the election under this subsection by reason of subparagraph three of
paragraph (k) of subdivision nine of section two hundred eight of this
chapter[; or (iii) an S corporation which is the parent of a qualified
subchapter S corporation subject to tax under article thirty-two, where
the shareholders of such parent are entitled to make the election under
this subsection by reason of paragraph three of subsection (o) of
section fourteen hundred fifty-three of this chapter].

(h) Cross reference. For definitions relating to S corporations, see
subsection one-A of section two hundred eight [and subsections (f) and
(g) of section fourteen hundred fifty] of this chapter.

§ 74. Paragraph 1 of subsection (i) of section 660 of the tax law, as
added by section 1 of part L of chapter 60 of the laws of 2007, is
amended to read as follows:

(1) Notwithstanding the provisions in subsection (a) of this section,
in the case of an eligible S corporation for which the election under
subsection (a) of this section is not in effect for the current taxable
year, the shareholders of an eligible S corporation are deemed to have
made that election effective for the eligible S corporation's entire
current taxable year, if the eligible S corporation's investment income
for the current taxable year is more than fifty percent of its federal
gross income for such year [provided that this subsection shall not
apply to an eligible S corporation that is subject to tax under article
thirty-two of this chapter]. In determining an eligible S corporation's
investment income, the investment income of a qualified subchapter S
subsidiary owned directly or indirectly by the eligible S corporation
shall be included.

§ 75. Paragraph 3 of subsection (c) of section 1085 of the tax law, as
amended by section 15 of part Y of chapter 63 of the laws of 2000, is
amended to read as follows:

(3) The provisions of this subsection and subsections (d) and (e) of
this section shall apply to the failure of a taxpayer to file a declara-
tion of estimated tax surcharge or the failure to pay all or any part of
an amount which is applied as an installment against such estimated tax
surcharge pursuant to sections one hundred ninety-seven-a, one hundred
ninety-seven-b, two hundred thirteen-a, two hundred thirteen-b, [four-
teen hundred sixty, fourteen hundred sixty-one], fifteen hundred thir-
teen and fifteen hundred fourteen of this chapter. For purposes of
applying this section and subsections (d) and (e) of this section to the
estimated tax surcharge, where appropriate the term "tax" shall be read
to mean "tax surcharge," and the terms "amount required to be paid,"
"amount which would be required to be paid," and "amount which would
have been required to be paid" shall be computed as the product of (1)
such amount computed without regard to the tax surcharges imposed under
sections one hundred eighty-four-a, one hundred eighty-six-c, one
hundred eighty-eight, two hundred nine-A, two hundred nine-B, [fourteen
hundred fifty-five-a, fourteen hundred fifty-five-b], fifteen hundred
five-a, and fifteen hundred twenty of this chapter, and (2) the MTA
percentage. The term "MTA percentage" shall mean the product of (A) the
tax rate applicable under such sections imposing such surcharges and (B)
the percentage utilized in determining the portion of the taxpayer's
business activity carried on within the metropolitan commuter transpor-
tation district under such sections.
§ 76. The opening paragraph of subparagraph (A) of paragraph 3 of
subsection (d) of section 1085 of the tax law, as amended by chapter 170
of the laws of 1994, is amended to read as follows:
An amount equal to ninety-one percent of the tax for the taxable year
computed on all items entering into the computation of the tax or taxes
of the taxpayer for the taxable year under article nine, nine-A[—thir-
ty-two] or thirty-three of this chapter. For purposes of computing the
tax, all items of receipts, income and expenses shall be placed on an
annualized basis—
§ 77. Clause (i) of subparagraph (A) of paragraph 4 of subsection (d)
section 1085 of the tax law, as amended by chapter 57 of the laws of
1993, is amended to read as follows:
(i) take the items entering into the computation of the tax or taxes
of the taxpayer for the taxable year under article nine, nine-A[—thir-
ty-two] or thirty-three of this chapter, for all months during the taxa-
ble year preceding the filing month,
§ 78. Paragraph 5 of subsection (d) of section 1085 of the tax law, as
added by chapter 61 of the laws of 1989, is amended to read as follows:
(5) In the case of any declaration installment, any reduction in such
installation resulting from the application of paragraph three or four of
this subsection shall be recaptured by increasing the amount of the next
installation determined under paragraph one or two of this subsection or
paragraph one of subsection (c) of this section by the amount of such
reduction (and by increasing subsequent installments to the extent that
the reduction has not previously been recaptured under this paragraph).
For purposes of the preceding sentence, a declaration installment means
any installment of estimated tax other than the mandatory first install-
ment required under paragraph (a) of subdivision one of section one
hundred ninety-seven-b, subdivision (a) of section two hundred thir-
teen-b[—subsection (a) of section fourteen hundred sixty-one] or subdi-
vision (a) of section fifteen hundred fourteen of this chapter.
§ 79. Paragraph 1 of subsection (e) of section 1085 of the tax law, as
amended by section 28-p of part H-3 of chapter 62 of the laws of 2003,
is amended to read as follows:
(1) Paragraphs (1) and (2) of subsection (d) of this section shall not apply in the case of any corporation (or any predecessor corporation)
which had [entire business] income, or the portion thereof allocated
within the state, of one million dollars or more for any taxable year
during the three taxable years immediately preceding the taxable year
involved; provided, however, that in the case of a corporation subject
tax under section fifteen hundred two-a of this chapter, paragraphs
(1) and (2) of subsection (d) of this section shall not apply if such
corporation had entire net income, or the portion thereof allocated
within the state, of one million dollars or more for any of the three
taxable years immediately preceding the taxable year involved, or if the
direct premiums subject to tax under section fifteen hundred two-a of
this chapter of the corporation for any of such three preceding taxable
years beginning on or after January first, two thousand three equals or
exceeds three million seven hundred fifty thousand dollars.
§ 80. Subsections (m) and (o) of section 1085 of the tax law are
REPEALED.
§ 81. Clause (ii) of subparagraph (B) of paragraph 2 of subsection
(q), paragraph 3 of subsection (s) and the closing paragraph of para-
graph 1 of subsection (t) of section 1085 of the tax law, as added by
S. 6359--D
section 10 of part N of chapter 61 of the laws of 2005, are amended to
read as follows:
(ii) fifty percent of the gross income that the organizer or material
advisor derived with respect to activities that were the basis for the
requirement to file, disclose or provide information pursuant to section
six thousand eleven of the internal revenue code, to the extent such
gross income is attributable to the avoidance of any tax imposed under
article nine, nine-A[---thirty-two] or thirty-three of this chapter.
(3) For purposes of this subsection, the term "understatement of
liability" means any understatement of the net amount payble with
respect to any tax imposed under article nine, nine-A[---thirty-two] or
thirty-three of this chapter or any overstatement of the net amount
creditable or refundable with respect to any such tax.
shall pay, with respect to each activity described in subparagraph (A)
of this paragraph, a penalty equal to one thousand dollars or, if the
person establishes that it is lesser, one hundred percent of the gross
income derived (or to be derived) by such person from such activity to
the extent such gross income is attributed to the avoidance of any tax
imposed under articles nine, nine-A[---thirty-two] or thirty-three of this chapter; provided, however, that if an activity with respect to
which a penalty imposed under this subsection involves a statement
described in clause (i) of subparagraph (B) of paragraph one of this
subsection, the penalty shall be equal to fifty percent of the gross
income derived (or to be derived) from that activity within the state by
the person on which the penalty is imposed. For purposes of the preced-
ing sentence, activities described in clause (i) of subparagraph (A) of
this paragraph with respect to each entity or arrangement shall be
treated as a separate activity and participation in each sale described
in clause (ii) of subparagraph (A) of this paragraph shall be so treat-
ed.
§ 82. The opening paragraph of subsection (c) of section 1087 of the
tax law, as separately amended by chapters 760 and 770 of the laws of
1992, is amended to read as follows:
If a taxpayer is required by subdivision three of section two hundred
eleven[---subsection (e) of section fourteen hundred sixty-two] or para-
graph one of subdivision (e) of section fifteen hundred fifteen of this
chapter, to file a report or amended return in respect of (i) a decrease
or increase in federal taxable income or federal alternative minimum
taxable income or federal tax, or (ii) a federal change or correction or
renegotiation, or computation or recomputation of tax, which is treated
in the same manner as if it were an overpayment for federal income tax
purposes, claim for credit or refund of any resulting overpayment of tax
shall be filed by the taxpayer within two years from the time such
report or amended return was required to be filed with the commissioner
[of taxation and finance]. If the report or amended return required by
any such provision of law is not filed within the period therein speci-
fied, no interest shall be payable on any claim for credit or refund of
the overpayment attributable to the federal change or correction. The
amount of such credit or refund--
§ 83. Subsection (g) of section 1088 of the tax law, as amended by
chapter 61 of the laws of 1989 and relettered by chapter 55 of the laws
of 1992, is amended to read as follows:
(g) Cross-reference.--For provision with respect to interest after
failure to file a report or amended return under subdivision three of
section two hundred eleven[---subsection (e) of section fourteen hundred
sixty-two] or paragraph one of subdivision (e) of section fifteen
§ 6359--D  160  A. 8559--D

§ 84. Paragraph 2 of subsection (b) of section 1096 of the tax law, as
amended by chapter 411 of the laws of 1986, is amended to read as
follows:
(2) The [tax commissioner] commissioner may take any action under para-
graph one of this subdivision to inquire into the commission of an
offense connected with the administration or enforcement of this article
or article nine, [nine-a] nine-A, thirteen, [thirteen-a, thirty-two] thir
thirteen-A or thirty-three of this chapter, provided, however, that
notwithstanding the provisions of section one hundred seventy-four of
this chapter no such action shall be taken when a referral by the
department or the [tax-commission] commissioner to the attorney general,
district attorney or other prosecutorial agency is in effect.
Provided, however, the [tax-commission] commissioner shall have power,
during the period when such referral is in effect, to examine or to
cause to be examined, by any agent or representative designated by it
for that purpose, any books, papers, records or memoranda bearing upon
the matters required to be included in the return, where such books,
papers, records or memoranda are in its possession, or where such books,
papers, records or memoranda are in the possession of the attorney
general, district attorney or other prosecutorial agency to which such
referral is made.
§ 85. Paragraph 1 of subsection (e) of section 1096 of the tax law, as
amended by section 8 of subpart D of part VI of chapter 57 of the laws
of 2009, is amended to read as follows:
(1) Authority to set interest rates.—The commissioner shall set the
overpayment and underpayment rates of interest to be paid pursuant to
sections two hundred thirteen, two hundred thirteen-b, two hundred
fifty-eight, two hundred sixty-three, two hundred ninety-four, one thou-
sand eighty-four, one thousand eighty-five[\textsuperscript{7}] and one thousand eighty-
eight[\textsuperscript{7}, fourteen hundred sixty-one and fourteen hundred sixty-three] of
this chapter, but if no such rate or rates of interest are set, such
overpayment rate shall be deemed to be set at six percent per annum and
such underpayment rate shall be deemed to be set at seven and one-half
percent per annum. Such overpayment and underpayment rates shall be the
rates prescribed in paragraph two of this subsection, but the underpay-
ment rate shall not be less than seven and one-half percent per annum.
Any such rates set by the commissioner shall apply to taxes, or any
portion thereof, which remain or become due or overpaid on or after the
date on which such rates become effective and shall apply only with
respect to interest computed or computable for periods or portions of
periods occurring in the period during which such rates are in effect.
§ 86. Subdivision (b) of section 1201-a of the tax law, as amended by
section 5 of part Y of chapter 62 of the laws of 2006, is amended to
read as follows:
(b) Empire state film production credit. Any city in this state having
a population of one million or more, acting through its local legisla-
tive body, is hereby authorized to adopt and amend local laws to allow a
credit against the general corporation tax and the unincorporated busi-
ness tax imposed pursuant to the authority of chapter seven hundred
seventy-two of the laws of nineteen hundred sixty-six which shall be
substantially identical to the credit allowed under section twenty-four
of this chapter, except that (A) the percentage of qualified production
costs used to calculate such credit shall be five percent, (B) whenever
such section twenty-four references the state, such words shall be read
S. 6359--D 161 A. 8559--D
as referencing the city, (C) such credit shall be allowed only to a
taxpayer which is a qualified film production company, and (D) the
effective date of such credit shall be July first, two thousand six.
Such credit shall be applied in a manner consistent with the credit
allowed under subdivision [thirty-six] twenty of section two hundred
[ten] ten-a of this chapter except as may be necessary to take into
account differences between the general corporation tax and the unincor-
porated business tax.
§ 87. Subdivision (c) of section 1201-a of the tax law, as amended by
chapter 300 of the laws of 2007, is amended to read as follows:
(c) Empire state commercial production credit. Any city in this state
having a population of one million or more, acting through its local
13 legislative body, is hereby authorized to adopt and amend local laws to
14 allow a credit against the general corporation tax and the unincorporat-
15 ed business tax imposed pursuant to the authority of chapter seven
16 hundred seventy-two of the laws of nineteen hundred sixty-six which
17 shall be substantially identical to the credit allowed under the
18 provisions of section twenty-eight of this chapter, except that (A) the
19 percentage of qualified production costs used to calculate such credit
20 shall be five percent, (B) whenever such section twenty-eight references
21 the state, such words shall be read as referencing the city, (C) such
22 credit shall be allowed only to a taxpayer that is a qualified commer-
23 cial production company, and (D) the effective date of such credit shall
24 be as provided in local laws. Such credit shall be applied in a manner
25 consistent with the credit allowed under subdivision [thirty-eight]
26 twenty-three of section two hundred [ten] ten-B of this chapter except
27 as may be necessary to take into account differences between the general
corporation tax and unincorporated business tax.

§ 88. The section heading and paragraphs 1 and 3 of subdivision (a) of
30 section 1505-a of the tax law, the section heading as added by chapter
31 11 of the laws of 1983 and paragraphs 1 and 3 of subdivision (a) as
32 amended by section 6 of part A of chapter 59 of the laws of 2013, are
33 amended to read as follows:

[Temporary—metropolitan] Metropolitan transportation business tax
35 surcharge on insurance corporations.

(1) Every domestic insurance corporation and every foreign or alien
37 insurance corporation, and every life insurance corporation described in
38 subdivision (b) of section fifteen hundred one of this article, for the
39 privilege of exercising its corporate franchise, or of doing business,
40 or of employing capital, or of owning or leasing property in the metro-
41 politan commuter transportation district in a corporate or organized
42 capacity, or of maintaining an office in the metropolitan commuter
43 transportation district, [for all or any part of its taxable years
44 commencing on or after January first, nineteen hundred eighty-
45 two, but
46 ending before December thirty-first, two thousand eighteen,] except
47 corporations specified in subdivision (c) of section fifteen hundred
twelve of this article, shall annually pay, in addition to the taxes
48 otherwise imposed by this article, a tax surcharge on the taxes imposed
49 under this article after the deduction of any credits otherwise allow-
50 able under this article as allocated to such district. Such taxes shall
51 be allocated to such district for purposes of computing such tax
52 surcharge upon taxpayers subject to tax under subdivision (b) of section
53 fifteen hundred ten of this article by applying the methodology, proce-
54 dures and computations set forth in subdivisions (a) and (b) of section
55 fifteen hundred four of this article, except that references to terms
56 denoting New York premiums, and total wages, salaries, personal service
S. 6359--D 162 A. 8559--D
1 compensation and commissions within New York shall be read as denoting
2 within the metropolitan commuter transportation district and terms
3 denoting total premiums and total wages, salaries, personal service
4 compensation and commissions shall be read as denoting within the state.
5 If it shall appear to the commissioner that the application of the meth-
6 odology, procedures and computations set forth in such subdivisions (a)
7 and (b) does not properly reflect the activity, business or income of a
taxpayer within the metropolitan commuter transportation district, then
8 the commissioner shall be authorized, in the commissioner's discretion,
9 to adjust such methodology, procedures and computations for the purpose
10 of allocating such taxes by:
11 (A) excluding one or more factors therein;
12 (B) including one or more other factors therein, such as expenses,
purchases, receipts other than premiums, real property or tangible
13 personal property; or
14 (C) any other similar or different method which allocates such taxes
15 by attributing a fair and proper portion of such taxes to the metropol-
itan commuter transportation district. The commissioner from time to time shall publish all rulings of general public interest with respect to any application of the provisions of the preceding sentence. The commissioner may promulgate rules and regulations to further implement the provisions of this section.

(3) Such tax surcharge shall be computed at the rate of [eighteen percent of the taxes imposed under sections fifteen hundred one and fifteen hundred ten of this article as limited by section fifteen hundred five of this article, as allocated to such district, for such taxable years or any part of such taxable years ending before December thirty-first, nineteen hundred eighty-three after the deduction of any credits otherwise allowable under this article, at the rate of seventeen percent of the taxes imposed under such sections as limited by section fifteen hundred five of this article, as allocated to such district, for such taxable years or any part of such taxable years ending on or after December thirty-first, nineteen hundred eighty-three and before January first, two thousand three after the deduction of any credits otherwise allowable under this article, and at the rate of] seventeen percent of the taxes imposed under sections fifteen hundred one, fifteen hundred two-a, and fifteen hundred ten of this article, as limited or otherwise determined by subdivision (a) or (b) of section fifteen hundred five of this article, as allocated to such district, [for such taxable years or any part of such taxable years ending after December thirty-first, two thousand two] after the deduction of any credits otherwise allowable under this article]; provided, however, that the tax surcharge imposed by this section shall not be imposed upon any taxpayer for more than four hundred thirty-two months]. Provided however, that for taxable years commencing on or after July first, two thousand, and in the case of taxpayers subject to tax under section fifteen hundred two-a of this article, for taxable years of such taxpayers beginning on or after July first, two thousand and before January first, two thousand three, such surcharge shall be calculated as if (i) the rate of the tax computed under paragraph one of subdivision (a) of section fifteen hundred two of this article was nine percent and (ii) the rate of the limitation on tax set forth in section fifteen hundred five of this article for domestic, foreign and alien insurance corporations except life insurance corporations was two and six-tenths percent.

§ 89. Section 1825 of the tax law, as amended by section 2 of part E of chapter 25 of the laws of 2009, is amended to read as follows:

§ 1825. Violation of secrecy provisions of the tax law.—Any person who violates the provisions of subdivision (b) of section twenty-one, subdivision one of section two hundred two, subdivision eight of section two hundred eleven, subdivision (a) of section three hundred fourteen, subdivision one or two of section four hundred thirty-seven, section four hundred eighty-seven, subdivision one or two of section five hundred fourteen, subsection (e) of section six hundred ninety-seven, subsection (a) of section nine hundred ninety-four, subdivision (a) of section eleven hundred forty-six, section twelve hundred eighty-seven, subdivision (a) of section fourteen hundred eighteen, [subsection (a) of section fourteen hundred sixty-seven] subdivision (a) of section fifteen hundred eighteen, subdivision (a) of section fifteen hundred fifty-five of this chapter, and subdivision (e) of section 11-1797 of the administrative code of the city of New York shall be guilty of a misdemeanor.

§ 90. Subdivisions (s) and (t) of section 957 of the general municipal law, as amended by section 1 of part S1 of chapter 57 of the laws of 2009, are amended to read as follows:

(s) "Qualified investment project" shall mean a project (i) located within an empire zone, (ii) at which five hundred or more jobs will be created, provided such jobs are new to the state and are in addition to any other jobs previously created by the owner of such project in the
state, and (iii) which will consist of tangible personal property and
other tangible property, including buildings and structural components
of buildings, described in subparagraphs (i), (ii), (iii), (iv) and clause (A) or (C) of subparagraph (v) of paragraph (b) of subdivision
[twelve-B] twelve-B three of section two hundred [ten] ten-B of the tax law, the
basis of which for federal income tax purposes will equal or exceed
seven hundred fifty million dollars. Provided however, the owner of such
project does not employ more than two hundred persons in the state at
the time such project is commenced.

(t) "Significant capital investment project" shall mean a project (i)
located within an empire zone, (ii) which will be either a newly
constructed facility or a newly constructed addition to or expansion of
a qualified investment project, consisting of tangible personal property
and other tangible property, including buildings and structural compo-
nents of buildings, described in subparagraphs (i), (ii), (iii), (iv)
and clause (A) or (C) of subparagraph (v) of paragraph (b) of subdivi-
sion [twelve-B] twelve-B three of section two hundred [ten] ten-B of the tax law,
the basis of which for federal income tax purposes will equal or exceed
seven hundred fifty million dollars, (iii) which is constructed after
the basis for federal income tax purposes of the property comprising
such qualified investment project equals or exceeds seven hundred fifty
million dollars, and (iv) at which five hundred or more jobs will be
created, provided such jobs are new to the state and are in addition to
any other jobs previously created by the owner of such project in the
state.

§ 91. Intentionally omitted.

§ 92. Intentionally omitted.

§ 93. Intentionally omitted.

§ 94. Intentionally omitted.

§ 95. Intentionally omitted.

§ 96. Intentionally omitted.

§ 97. Intentionally omitted.

§ 98. Intentionally omitted.

S. 6359--D 164 A. 8559--D

§ 99. Notwithstanding any provisions of law to the contrary and
notwithstanding the repeal of article 32 of the tax law by section one
of this act, the repeal of section 180 of the tax law by section two of
this act and the repeal of section 181 of the tax law by section three
of this act, all provisions of such article and such sections, in
respect to the imposition, exemption, assessment, payment, payment over,
determination, collection, and credit or refund of tax, interest and
penalty imposed thereunder, the filing of forms and returns, the preser-
vation of records for the purposes of such tax, the secrecy of returns,
the disposition of revenues, and the civil and criminal penalties appli-
cable to the violation of the provisions of such article 32 and such
sections 180 and 181, shall continue in full force and effect with
respect to all such tax accrued for taxable years beginning before January
1, 2015; and all actions and proceedings, civil or criminal,
commenced or authorized to be commenced under or by virtue of any
provision of such article 32 or by virtue of any provision of such
section 180 or 181 so repealed, and pending or able to be commenced
immediately prior to the taking effect of such repeal, may be commenced,
prosecuted and defended to final effect in the same manner as they might
if such provisions were not so repealed.

§ 100. Subdivision 1 of section 187 of the tax law, as amended by
chapter 2 of the laws of 1995, is amended to read as follows:

1. A taxpayer shall be allowed a credit, to be credited against the
taxes imposed by this article, other than the taxes and fees imposed by
sections [one hundred eighty, one hundred eighty-six-a] one hundred
eighty-six-a and one hundred eighty-six-e of this chapter. The amount of
the credit shall be the amount of the special additional mortgage
recording tax paid by the taxpayer pursuant to the provisions of subdi-
vision one-a of section two hundred fifty-three of this chapter on mort-
gages recorded on and after January first, nineteen hundred seventy-
ine. Provided, however, that the amount of such credit allowable
against the tax imposed by section one hundred eighty-four of this chap-
ter shall be the excess of the amount of such special additional mort-
gage recording tax paid over the amount of any credit allowed by this
section against the tax imposed by section one hundred eighty-three of
this chapter. Provided further, however, no credit shall be allowed with
respect to a mortgage of real property principally improved or to be
improved by one or more structures containing in the aggregate not more
than six residential dwelling units, each dwelling unit having its own
separate cooking facilities, where the real property is located in one
or more of the counties comprising the metropolitan commuter transporta-
tion district and where the mortgage is recorded on or after May first,
nineteen hundred eighty-seven. Provided further, however, no credit
shall be allowed with respect to a mortgage of real property principally
improved or to be improved by one or more structures containing in the
aggregate not more than six residential dwelling units, each dwelling
unit having its own separate cooking facilities, where the real property
is located in the county of Erie and where the mortgage is recorded on
or after May first, nineteen hundred eighty-seven.

§ 101. Subdivision 1 of section 187-a of the tax law, as added by
chapter 142 of the laws of 1997, is amended to read as follows:
1. Allowance of credit. A taxpayer shall be allowed a credit, to be
computed as hereinafter provided, against the taxes imposed by this
article, other than the taxes imposed by sections [one hundred eighty,
one hundred eighty-one,] one hundred eighty-six-a, one hundred eighty-
six-e and one hundred eighty-nine of this article, for employing within
the state a qualified employee. Provided, however, the amount of credit
allowed by this section against the tax imposed by section one hundred
eighty-four of this article shall be the excess of the credit computed
under this section over the amount of credit allowed by this section
against the tax imposed by section one hundred eighty-three of this
article.

§ 102. Subdivision 1 of section 190 of the tax law, as amended by
section 17 of part B of chapter 58 of the laws of 2004, is amended to
read as follows:
1. General. A taxpayer shall be allowed a credit against the tax
imposed by this article[, other than the taxes and fees imposed by
sections one hundred eighty and one hundred eighty-one of this article,]
equal to twenty percent of the premium paid during the taxable year for
long-term care insurance. In order to qualify for such credit, the
taxpayer's premium payment must be for the purchase of or for continuing
coverage under a long-term care insurance policy that qualifies for such
credit pursuant to section one thousand one hundred seventeen of the
insurance law.

§ 103. Subdivision 5 of section 192 of the tax law is REPEALED.

§ 104. Clauses 1 and 2 of subparagraph (A) and subparagraph (B) of
paragraph (iii) of subdivision 9 of section 16-v of section 1 of chapter
174 of the laws of 1968 constituting the urban development corporation
act, as added by section 1 of part C of chapter 59 of the laws of 2013,
is amended to read as follows:
(1) over fifty percent of the number of shares of stock entitling the
holders thereof to vote for the election of directors or trustees is
owned or controlled, either directly or indirectly, by a taxpayer
subject to tax under the following provisions of the tax law: article
nine-A; section one hundred eighty-three, OR one hundred eighty-four [OR
one hundred eighty-five] of article nine; [article thirty-two] or arti-
cle thirty-three; or
(2) is substantially similar in operation and in ownership to a busi-
ness entity (or entities) taxable or previously taxable under the
following provisions of the tax law: article nine-A; section one hundred eighty-three, one hundred eighty-four, former section one hundred eighty-five or former section one hundred eighty-six of article nine; former article thirty-two; article thirty-three; article twenty-three, or would have been subject to tax under such article twenty-three (as such article was in effect on January first, nineteen hundred eighty) or the income (or losses) of which is (or was) includable under article twenty-two; or
(B) a sole proprietorship, partnership, limited partnership, limited liability company, or New York subchapter S corporation that is not substantially similar in operation and in ownership to a business entity (or entities) taxable, or previously taxable, under article nine-A of the tax law, section one hundred eighty-three, one hundred eighty-four, former section one hundred eighty-five or former section one hundred eighty-six of article nine of the tax law, former article thirty-two or article thirty-three of the tax law, article twenty-three of the tax law or which would have been subject to tax under such article twenty-three (as such article was in effect on January first, nineteen hundred eighty) or the income (or losses) of which is (or was) includable under article twenty-two of the tax law; and
§ 105. Section 206 of the tax law, as added by chapter 69 of the laws of 1978, is amended to read as follows:
S. 6359-D
A. 8559-D

§ 206. Deposit and disposition of revenue. The [license fees] taxes, percentage, interest and other charges imposed by this article shall be collected and deposited and receipts therefor issued by the commissioner, except that such license fees, taxes, percentage, interest and other charges imposed by section one hundred eighty of this chapter shall be collected and deposited and receipts therefor issued by the proper state officer in accordance with the provisions of subdivision two of section one hundred eighty of this chapter,] commissioner and all revenues so collected or received shall be deposited and disposed of pursuant to the provisions of section one hundred seventy-one-a of this chapter.

§ 106. Subsection (a) of section 1080 of the tax law, as added by chapter 188 of the laws of 1964, is amended to read as follows:
(a) General.---The provisions of this article shall apply to the administration of and the procedures with respect to the taxes imposed by articles nine [(except section one hundred eighty)], and nine-A[ and nine-c] of this chapter for taxable years or periods ending on or after December thirty-first, nineteen hundred sixty-four.

§ 107. Subdivisions (a) and (c) of section 1809 of the tax law, as added by section 1 of subpart A of part S of chapter 57 of the laws of 2010, are amended to read as follows:
(a) Any person who, with intent to evade payment of any tax imposed under article nine [(other than under section one hundred eighty or one hundred eighty-one)], nine-A, thirteen, [thirty-two,] thirty-three or thirty-three-A of this chapter, fails to file a return or report for three consecutive taxable years shall be guilty of a class E felony, provided that such person had an unpaid tax liability, in excess of the threshold amount with respect to each of the three consecutive taxable years. The threshold amount in the case of a taxable year under article nine-A of this chapter ending after June thirtieth, nineteen hundred eighty-nine is the applicable fixed dollar minimum prescribed under paragraph (d) of subdivision one of section two hundred ten of this chapter. In the event such fixed dollar minimum is less than two hundred fifty dollars, the threshold amount in the case of such taxable year is two hundred fifty dollars. In all other cases the threshold amount is two hundred fifty dollars.
(c) As used in this section, the terms "return" and "report" shall mean a return or report required under section one hundred ninety-two, two hundred eleven, two hundred ninety-four, [fourteen hundred sixty-
fifteen hundred fifteen or fifteen hundred fifty-four of this chapter. It shall not include any return or report referred to in section one hundred ninety-seven-a, two hundred thirteen-a, [fourteen hundred sixty] or fifteen hundred thirteen of this chapter.

§ 108. Paragraphs (d), (e), (g), (h) and (q) of section 104-A of the business corporation law, subdivisions (d), (e) and (q) as amended by chapter 166 of the laws of 1991, subdivision (g) as added by chapter 591 of the laws of 1982, and subdivision (h) as amended by chapter 117 of the laws of 1986, are amended to read as follows:

(d) For filing a certificate of incorporation pursuant to section four hundred two of this chapter, one hundred twenty-five dollars [plus the tax on shares prescribed by section one hundred eighty of the tax law].

(e) For filing a certificate of amendment pursuant to section eight hundred five of this chapter, sixty dollars [plus the tax on shares prescribed by section one hundred eighty of the tax law if such certificate shows a change of shares].

(g) For filing a restated certificate of incorporation pursuant to section eight hundred seven of this chapter, sixty dollars [plus the tax on shares prescribed by section one hundred eighty of the tax law if such certificate shows a change of shares].

(h) For filing a certificate of merger or consolidation pursuant to section nine hundred four of this chapter, or a certificate of exchange pursuant to section nine hundred thirteen (other than paragraph (g) of section nine hundred thirteen) of this chapter, sixty dollars [plus the tax on shares prescribed by section one hundred eighty of the tax law if such certificate shows a change of shares].

(q) For filing a certificate of incorporation by a professional service corporation pursuant to section fifteen hundred three of this chapter, one hundred twenty-five dollars [plus the tax on shares prescribed by section one hundred eighty of the tax law].

§ 109. Subdivision 8 of section 7-a of the general associations law, as added by chapter 575 of the laws of 1964, is amended to read as follows:

8. The provisions of section ninety-six of the executive law prescribing the fee to be collected by the department of state for filing a certificate of incorporation under the business corporation law shall apply to the certificate of incorporation to be filed pursuant to this section[, and the organization tax payable under section one hundred eighty of the tax law in respect of a corporation formed under the business corporation law shall be paid before the department of state shall file such certificate of incorporation].

§ 110. Paragraphs 1 and 2 of subdivision (1) of section 11-640 of the administrative code of the city of New York, as amended by section 3 of part R of chapter 59 of the laws of 2012, is amended to read as follows:

(1) Notwithstanding anything to the contrary contained in this section other than subdivision (m) of this section, a corporation that was in existence before January first, two thousand [twelve] fourteen and was subject to tax under subchapter two of this chapter for its last taxable year beginning before January first, two thousand [twelve] fourteen, shall continue to be taxable under such subchapter for all taxable years beginning on or after January first, two thousand [twelve] fourteen and before January first, two thousand [fifteen] seventeen. The preceding sentence shall not apply to any taxable year during which such corporation is a banking corporation described in paragraphs one through eight of subdivision (a) of this section. Notwithstanding anything to the contrary contained in this section other than subdivision (m) of this section, a banking corporation or corporation that was in existence before January first, two thousand [twelve] fourteen and was subject to tax under this subchapter for its last taxable year beginning before January first, two thousand [twelve] fourteen, shall continue to be taxable under this subchapter for all taxable years beginning on or
after January first, two thousand [twelve] fourteen and before January first, two thousand [fifteen] seventeen only if the corporation is a banking corporation as defined in subdivision (a) of this section or the corporation satisfies the requirements for a corporation to elect to be taxable under this subchapter. Provided further, that nothing in this subdivision shall prohibit a corporation that elected pursuant to subdivision (d) of this section to be taxable under subchapter two of this chapter from revoking that election in accordance with subdivision (d) of this section. For purposes of this paragraph, a corporation shall be considered to be subject to tax under subchapter two of this chapter for a taxable year if such corporation was not a taxpayer but was properly included in a combined report filed pursuant to subdivision four of section 11-605 of this chapter for such taxable year and a corporation shall be considered to be subject to tax under this subchapter for a taxable year if such corporation was not a taxpayer but was properly included in a combined report filed pursuant to subdivision (f) or (g) of section 11-646 of this part for such taxable year. A corporation that was in existence before January first, two thousand [twelve] fourteen but first becomes a taxpayer in a taxable year beginning on or after January first, two thousand [twelve] fourteen and before January first, two thousand [fifteen] seventeen, shall be considered for purposes of this paragraph to have been subject to tax under subchapter two of this chapter for its last taxable year beginning before January first, two thousand [twelve] fourteen if such corporation would have been subject to tax under such subchapter for its last taxable year beginning before January first, two thousand [twelve] fourteen but first becomes a taxpayer in a taxable year beginning on or after January first, two thousand [twelve] fourteen and before January first, two thousand [fifteen] seventeen, shall be considered for purposes of this paragraph to have been subject to tax under this subchapter for its last taxable year beginning before January first, two thousand [twelve] fourteen if such corporation would have been subject to tax under this subchapter for such taxable year if it had been a taxpayer during such taxable year. A corporation that was in existence before January first, two thousand [twelve] fourteen but first becomes a taxpayer in a taxable year beginning on or after January first, two thousand [twelve] fourteen and before January first, two thousand [fifteen] seventeen, shall be considered for purposes of this paragraph to have been subject to tax under this subchapter for its last taxable year beginning before January first, two thousand [twelve] fourteen if such corporation would have been subject to tax under this subchapter for such taxable year if it had been a taxpayer during such taxable year.

(2) Notwithstanding anything to the contrary contained in this section other than subdivision (m) of this section, a corporation formed on or after January first, two thousand [twelve] fourteen and before January first, two thousand [fifteen] seventeen may elect to be subject to tax under this subchapter or under subchapter two of this chapter for its first taxable year beginning on or after January first, two thousand [twelve] fourteen and before January first, two thousand [fifteen] seventeen in which either (i) sixty-five percent or more of its voting stock is owned or controlled, directly or indirectly by a financial holding company, provided the corporation whose voting stock is so owned or controlled is principally engaged in activities that are described in section 4(k)(4) or 4(k)(5) of the federal bank holding company act of nineteen hundred fifty-six, as amended and the regulations promulgated pursuant to the authority of such section or (ii) it is a financial subsidiary. An election under this paragraph may not be made by a corporation described in paragraphs one through eight of subdivision (a) of this section or in subdivision (e) of this section. In addition, an election under this paragraph may not be made by a corporation that is a party to a reorganization, as defined in subsection (a) of section 368 of the internal revenue code of 1986, as amended, of a corporation described in paragraph one of this subdivision if both corporations were sixty-five percent or more owned or controlled, directly or indirectly by the same interests at the time of the reorganization. An election under this paragraph must be made by the taxpayer on or before the due date for filing its return (determined with regard to extensions of time for filing) for the applicable taxable year. The
election to be taxed under subchapter two of this chapter shall be made
by the taxpayer by filing the return required pursuant to subdivision
one of section 11-605 of this chapter and the election to be taxed under
this subchapter shall be made by the taxpayer by filing the return
required pursuant to subdivision (a) of section 11-646 of this part. Any
election made pursuant to this paragraph shall be irrevocable and shall
apply to each subsequent taxable year beginning on or after January
first, two thousand [twelve] fourteen and before January first, two
thousand [fifteen] seventeen, provided that the stock ownership and
activities requirements described in subparagraph (i) of this paragraph
are met or such corporation described in subparagraph (ii) of this para-
graph continues as a financial subsidiary.
§ 111. Subparagraph (iv) of paragraph 2 of subdivision (f) of section
11-646 of the administrative code of the city of New York, as amended by
section 4 of part R of chapter 59 of the laws of 2012, is amended to
read as follows:
(iv) (A) Notwithstanding any provision of this paragraph, any bank
holding company exercising its corporate franchise or doing business in
the city may make a return on a combined basis without seeking the
permission of the commissioner with any banking corporation exercising
its corporate franchise or doing business in the city in a corporate or
organized capacity sixty-five percent or more of whose voting stock is
owned or controlled, directly or indirectly, by such bank holding compa-
y, for the first taxable year beginning on or after January first, two
thousand and before January first, two thousand [fifteen] seventeen
during which such bank holding company registers for the first time
under the federal bank holding company act, as amended, and also elects
to be a financial holding company. In addition, for each subsequent
taxable year beginning after January first, two thousand and before
January first, two thousand [fifteen] seventeen, any such bank holding
company may file on a combined basis without seeking the permission of
the commissioner with any banking corporation that is exercising its
corporate franchise or doing business in the city and sixty-five percent
or more of whose voting stock is owned or controlled, directly or indi-
rectly, by such bank holding company if either such banking corporation
is exercising its corporate franchise or doing business in the city in a
corporate or organized capacity for the first time during such subse-
quent taxable year, or sixty-five percent or more of the voting stock of
such banking corporation is owned or controlled, directly or indirectly,
by such bank holding company for the first time during such subsequent
taxable year. Provided however, for each subsequent taxable year begin-
ing after January first, two thousand and before January first, two
thousand [fifteen] seventeen, a banking corporation described in either
of the two preceding sentences which filed on a combined basis with any
such bank holding company in a previous taxable year, must continue to
file on a combined basis with such bank holding company if such banking
corporation, during such subsequent taxable year, continues to exercise
its corporate franchise or do business in the city in a corporate or
organized capacity and sixty-five percent or more of such banking corpo-
ration's voting stock continues to be owned or controlled, directly or
indirectly, by such bank holding company, unless the permission of the
commissioner has been obtained to file on a separate basis for such
subsequent taxable year. Provided further, however, for each subsequent
taxable year beginning after January first, two thousand and before
January first, two thousand [fifteen] seventeen, a banking corporation
described in either of the first two sentences of this clause which did
not file on a combined basis with any such bank holding company in a
previous taxable year, may not file on a combined basis with such bank
holding company during any such subsequent taxable year unless the
permission of the commissioner has been obtained to file on a combined
basis for such subsequent taxable year.
(B) Notwithstanding any provision of this paragraph other than clause 2 (A) of this subparagraph, the commissioner may not require a bank holding company which, during a taxable year beginning on or after January first, two thousand and before January first, two thousand [fifteen] seventeen, registers for the first time during such taxable year under the federal bank holding company act, as amended, and also elects to be a financial holding company, to make a return on a combined basis for any taxable year beginning on or after January first, two thousand and before January first, two thousand [fifteen] seventeen with a banking corporation sixty-five percent or more of whose voting stock is owned or controlled, directly or indirectly, by such bank holding company.

§ 112. Severability. If any provision of this act shall for any reason be finally adjudged by any court of competent jurisdiction to be invalid, such judgment shall not affect, impair, or invalidate the remainder of this act, but shall be confined in its operation to the provision directly involved in the controversy in which such judgment shall have been rendered. It is hereby declared to be in the intent of the legislature that this act would have been enacted even if such invalid provision had not been included in this act. Provided further, if a court of final, competent jurisdiction adjudges the tax rates imposed on qualified New York manufacturers to be invalid, qualified New York manufacturers shall be subject to the same tax rates as all other taxpayers subject to tax under article 9-A of the tax law. Provided further, if a court of final, competent jurisdiction adjudges the tax rate of the metropolitan transportation business tax surcharge imposed under section 209-B of the tax law to be invalid, the rate of such surcharge shall be twenty-seven and one tenth percent. Provided further, if a court of final, competent jurisdiction adjudges that any of the tax credits provided by this act to be invalid, such credit or credits shall be deemed repealed and shall be of no force and effect as to any taxpayers.

§ 113. This act shall take effect January 1, 2015 and shall apply to taxable years commencing on or after such date; provided that the amendments to section 25 of the tax law made by section forty-three of this act shall not affect the repeal of such section and shall be deemed repealed therewith; provided, further, that the amendments to the opening paragraph of subdivision (a), subparagraph (C) of paragraph 2 of subdivision (e) and subdivision (f) of section 35 of the tax law made by section fifty of this act shall not affect the repeal of such provisions and shall be deemed repealed therewith; provided, further, that the amendments to clause (xxxii) of subparagraph (B) of paragraph 1 of subsection (i) of section 606 of the tax law made by section sixty-eight of this act shall not affect the repeal of such clause and shall be deemed repealed therewith; provided, further, that the amendments to clause (xxxiii) of subparagraph (B) of paragraph 1 of subsection (i) of section 606 of the tax law made by section sixty-eight of this act shall not affect the repeal of such clause and shall be deemed repealed therewith; and provided, further, that the amendments to clause (ii) of subparagraph (B) of paragraph 2 of subsection (q), paragraph 3 of subsection (q) and the closing paragraph of paragraph 1 of subsection (t) of section 1085 of the tax law made by section eighty-one of this act shall not affect the repeal of such provisions and shall be deemed repealed therewith.